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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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* * * * *
*
UNITED STATES OF AMERICA
*
v.
* 12-cr-140-01-PB
* January 10, 2013
* 9:25 a.m.
LISA BIRON
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* * * * *
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DAY 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE PAUL J. BARBADORO  
AND A JURY

Appearances:

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Helen Fitzgibbon, AUSA  
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Official Court Reporter  
United States District Court  
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1                               BEFORE THE JURY

2                               THE CLERK: Court is in session and has for  
3 consideration jury trial day three in United States of  
4 America versus Lisa Biron, Criminal Case No.  
5 12-cr-140-01-PB

6                               THE COURT: What's the exhibit number of the  
7 last exhibit, the computer clip that was played to the  
8 jury?

9                               MS. FITZGIBBON: That's Exhibit 12, your  
10 Honor.

11                              THE COURT: Good morning, members of the jury.  
12 Yesterday you heard testimony from R.B.'s father. He  
13 was shown a still taken from a computer video file and  
14 testified about what he saw depicted in that still. And  
15 you also heard him testify that he had -- saw him listen  
16 to the audio portion of a computer video clip and  
17 testify concerning the identity of the voices on the  
18 video clip. I just want to make sure you understand  
19 that the parties agree that the still image that he saw  
20 and the audio that he listened to were both taken from  
21 Exhibit 12 which you saw at the end of the day  
22 yesterday, okay?

23                              I also want to announce a stipulation. You  
24 heard audio clips of conversations that were played and  
25 that were purportedly conversations in which the

1 defendant was a participant. I simply want to read a  
2 stipulation about those exhibits to you.

3 Were they played in the order in which they  
4 are listed?

5 MS. FITZGIBBON: Yes, your Honor.

6 THE COURT: Okay. So, the first of those  
7 audio clips was, is Exhibit 10A. And the parties here  
8 agree that these were all clips that involved the  
9 defendant, Lisa Biron, as a participant. And further  
10 agree that with respect to 10A, that was a recorded clip  
11 from a recorded call between Lisa Biron and R.B. on  
12 12/9/12.

13 10B was a recorded telephone call clip between  
14 Lisa Biron and her friend, Suzanne Harbinson, on  
15 12/14/12. The first call occurred at 12:48 p.m. on  
16 12/9. The second call occurred on 12/14 at 5:20.

17 Exhibit 10C is a recorded call of, a clip of a  
18 call between Lisa Biron and R.B. on 12/15/12 at 11:11.

19 10D is a clip of a recorded call between Lisa  
20 Biron and her mother, Jo-Ann Bonczar, at 12 -- on  
21 12/19/12 at 4:47 p.m.

22 10E was a recorded telephone clip of a call  
23 between Lisa Biron and her mother, Jo-Ann Bonczar, at  
24 12/20/12 at 5:33.

25 And 10F is a recorded telephone clip of a call

1 between Lisa Biron and her father, Mike Bonczar, on  
2 12/21/12 at 12:08 p.m.

3 And the parties agree that these facts are  
4 correct, so you can treat these stipulations as if there  
5 was evidence admitted at the trial establishing those  
6 facts, all right?

7 Are we ready to proceed?

8 MS. FITZGIBBON: Yes, your Honor.

9 THE COURT: Call your next witness, please.

10 MS. FITZGIBBON: The government calls James  
11 Scripture, your Honor.

12 THE CLERK: Would you please raise your right  
13 hand.

14 JAMES SCRIPTURE

15 having been duly sworn, testified as follows:

16 THE CLERK: Thank you. Would you please state  
17 your name and spell your last name for the record.

18 THE WITNESS: My name is James E. Scripture,  
19 Jr., S-C-R-I-P-T-U-R-E.

20 DIRECT EXAMINATION

21 BY MS. FITZGIBBON:

22 Q. How are you employed, sir?

23 A. I'm a special agent with the Federal Bureau of  
24 Investigation.

25 Q. And how long have you been with the Federal

1 Bureau of Investigation?

2 A. Thirty-three years.

3 Q. What's your current title?

4 A. I'm a certified forensic examiner as well as a  
5 special agent.

6 Q. What are your current job responsibilities?

7 A. My primary responsibilities are executing  
8 search warrants in digital environments, computer  
9 environments, and I perform computer forensic  
10 examinations on the evidence that is seized, and I also  
11 testify in court, much like today.

12 Q. How long have you been a computer forensic  
13 examiner with the FBI?

14 A. Since 1996.

15 Q. And can you tell the jury very briefly about  
16 your educational background, please?

17 A. I have a bachelor's degree in accounting from  
18 the University of Maine at Orono. I have a masters in  
19 criminal justice from Westfield State College. I have a  
20 bachelor degree in computer science with a minor in  
21 mathematics from Westfield State College.

22 Q. And how did you first become involved in  
23 computer forensics?

24 A. In 1996 the FBI lab could not keep up with the  
25 amount of electronic evidence that was being received in

1 Washington, so they decided to train people like myself  
2 in the field so that that evidence didn't have to be  
3 shipped to Washington, DC.

4 Q. So prior to '96 you were a special agent with  
5 the FBI doing investigations?

6 A. Correct.

7 Q. And since '96 you've been a CART examiner?

8 A. Correct.

9 Q. Are there particular tools that you utilize as  
10 as a forensic examiner with the FBI?

11 A. There are many forensic software programs that  
12 we use. There are three or four primary tools such as  
13 EnCase, AccessData Lab, and x-rays forensics that are  
14 used more than others.

15 Q. And have you received training with respect to  
16 these tools?

17 A. Yes, I have.

18 Q. Would you just describe some of the computer  
19 training and courses you've had with the FBI?

20 A. Each year I attend three, four or five-week  
21 long or two-week long classes put on by the FBI or by  
22 commercial companies. Each year I am subject to  
23 maintaining my certification by passing a proficiency  
24 exam, and I also have to pass mandated computer-based  
25 self-based trainings.

1 Q. Do you have any computer-related industry  
2 certifications?

3 A. I do. I'm a certified Novell administrator.  
4 I hold the A++ and Net+ certifications and also the  
5 Access Data Certified Examiner certification.

6 Q. Have you worked on a variety of different  
7 types of cases as a forensic examiner while employed  
8 with the FBI?

9 A. I have.

10 Q. How many hard drives would you estimate you've  
11 examined while working at the FBI?

12 A. Hundreds, possibly a thousand.

13 Q. And how many external media such as CDs, DVDs  
14 have you reviewed?

15 A. Thousands of pieces of external media.

16 Q. Have you ever testified in court before  
17 regarding computer forensic exams that you performed?

18 A. I have. I have testified in federal and state  
19 court.

20 Q. And have you been certified as a computer  
21 forensic expert by these courts?

22 A. Each time I was certified, yes.

23 MS. FITZGIBBON: Your Honor, I move to have  
24 Special Agent Scripture declared an expert in computer  
25 forensics.



1 MR. MOIR: No objection.

2 THE COURT: Proceed.

3 Q. Now, you mentioned some of the tools that the  
4 FBI uses. I think you said AD, STK. The various tools  
5 you use, how do you obtain them, how do you come to use  
6 them for your forensic exam?

7 A. They have to be approved through independent  
8 verification by the FBI forensic support unit out of  
9 headquarters in order to establish that they are  
10 reliable and that they do what they purport to do, and  
11 at that point in time they are made available to each of  
12 the computer forensic examiners.

13 Q. And are these tools used by other law  
14 enforcement agents as well nationwide?

15 A. Yes, they are.

16 Q. And the tools, are these some of the tools  
17 that you will be testifying about today?

18 A. Yes.

19 Q. And are these tools that you have used in  
20 cases where you have been certified as an expert?

21 A. Yes.

22 Q. Did you conduct an examination of a computer  
23 evidence related to this case, United States versus Lisa  
24 Biron?

25 A. I did.

1 Q. And have you helped prepare some exhibits for  
2 this matter?

3 A. Yes.

4 Q. Okay. I'd like to show you what's been marked  
5 as Exhibit 9A. And can you tell me if you recognize  
6 that?

7 A. I do.

8 Q. And how do you recognize that?

9 A. I recognize it as a computer that I examined  
10 by the date, my initials, the file number, and the  
11 exhibit number that I gave it when it arrived at my lab.

12 Q. And when did it arrive at your lab?

13 A. It arrived on December 6, 2012, and I started  
14 the examination on December 10th, 2012.

15 Q. What did you do when you first obtained this  
16 exhibit?

17 A. I locked it in an evidence locker. I received  
18 it on a Thursday. And the following Monday I took it  
19 out of the evidence locker and removed the battery,  
20 removed the hard drive, and started to make an image of  
21 the contents of the hard drive that was contained within  
22 this computer.

23 Q. I'm going to show you what's been marked as  
24 Government's 9B. And do you recognize that?

25 A. Yes, I do.

1 Q. How do you recognize it?

2 A. I recognize it as the hard drive that was  
3 contained within this computer, and I have my initials,  
4 the date, the file number for the case that it applies  
5 to, as well as the questioned item number that I wrote  
6 on this hard drive.

7 Q. And what did you do when you first received  
8 that hard drive?

9 A. I hooked it up to a write blocker so that I  
10 could make an exact image of the contents of that hard  
11 drive.

12 Q. Okay, I'm going to come back to that. I'm  
13 just going to ask you to identify one more item. If I  
14 could ask you to look at Government's Exhibit 8 and ask  
15 you if you recognize that?

16 A. I do.

17 Q. And how do you recognize that?

18 A. It's an iPhone that I received as part of this  
19 examination. It contains my initials, the questioned  
20 item number that I wrote on it, as well as the numbers  
21 for the case file number.

22 Q. And when did you obtain this exhibit?

23 A. On December 6, the same as the hard drive and  
24 the laptop computer.

25 Q. And what did you do when you received it?

1           A.   Placed it in an evidence locker until I was  
2 ready to start the exam.

3           Q.   Okay. Just going back for a second to 9A and  
4 9B. You testified that 9B is a hard drive?

5           A.   Correct.

6           Q.   Did that come to you in the form that I handed  
7 them to you?

8           A.   No. The hard drive and the battery were  
9 actually in place in the computer. I removed them, the  
10 batteries, so it wouldn't accidentally start up on its  
11 own power, and I removed the hard drive so that I could  
12 examine it or at least make an image of it using a write  
13 blocker.

14          Q.   Okay, and can you tell the jury what an image  
15 is?

16          A.   An image is a bit for bit copy of the entire  
17 content of the hard drive.

18          Q.   And a hard drive is what?

19          A.   It's the item of storage contained within a  
20 computer. It is where the data and the programs on the  
21 computer are located.

22          Q.   And I think you said you used a write block.  
23 Can you tell the jury what a write block does?

24          A.   It can be either a hardware or software device  
25 that prevents me from making any changes to the hard

1 drive. So, when I conduct the examination, I conduct it  
2 on the image of the hard drive which has been verified  
3 to be an exact and true copy.

4 Q. When you look at a hard drive, is there  
5 usually any information which indicates the user of that  
6 computer?

7 A. Yes, there are several locations that user  
8 information may be found.

9 Q. And when you looked at this computer, was  
10 there any information which led you to have an idea of  
11 who the user was of this computer?

12 A. Yes, there was.

13 Q. And what was that?

14 A. Well, within the computer name, within the  
15 system registry file, there was the name Lisa Biron dash  
16 HP as the name of the computer. Within the security  
17 administration manager file, the SAM file, S-A-M, one of  
18 the users was listed as Lisa Biron, and the user  
19 security ID 1,000 which is usually the first user  
20 created account on the machine. And within the software  
21 registry file the registered owner was listed as Lisa  
22 Biron.

23 Q. I'm going to show you what's been marked as  
24 Exhibit 14A for identification. Can you just tell me if  
25 you recognize that; please?

1 A. Yes.

2 Q. Okay, and how do you recognize that?

3 A. I obtained this through AD Lab. It's a  
4 shortened version of the contents of the registry system  
5 file.

6 Q. And so did you create that document?

7 A. I did.

8 MS. FITZGIBBON: Your Honor, I'd ask to strike  
9 the ID on 14A and move it as a full exhibit.

10 MR. MOIR: No objection.

11 THE COURT: Without objection.

12 (Government's Exhibit 14A admitted.)

13 MS. FITZGIBBON: Publish this to the jury. We  
14 need the jury monitors on.

15 THE COURT: The jury monitors are on. The  
16 image isn't coming up on my screen either.

17 THE CLERK: They're on.

18 THE COURT: They're on, so it's on your end.

19 MS. FITZGIBBON: Thank you.

20 Q. Would you just please tell the jury again,  
21 what does this screen shot contain?

22 A. It's information contained within the registry  
23 file known as SYSTEM on this particular computer, and it  
24 registers the computer name which in this case is Lisa  
25 Biron dash HP.

1 Q. And you obtained this from Government's  
2 Exhibit 9B?

3 A. It came from the hard drive within that net-  
4 book computer, yes.

5 Q. I'm going to show you what's been marked as  
6 Government's 14B. And can you just say if you recognize  
7 that?

8 A. I do.

9 Q. How do you recognize it?

10 A. It's the very first portion of a report that  
11 was generated using Celebrite and it lists information  
12 pertaining to the iPhone here at the desk that I  
13 examined.

14 Q. And what is Celebrite?

15 A. It's a forensic apparatus and related software  
16 that we use to examine cell phones.

17 MS. FITZGIBBON: Your Honor, I move to strike  
18 the ID on 14B and publish it to the jury.

19 MR. MOIR: No objection.

20 THE COURT: Without objection.

21 (Government's Exhibit 14B admitted.)

22 Q. And were you able to obtain information using  
23 Celebrite with respect to the user of this cell phone?

24 A. I was.

25 Q. And can you -- I'm sorry. I was going to ask

1 you to point out to the jury, then, which line and where  
2 you were able to obtain information about the user of  
3 this cell phone?

4 A. The very last line where it says computer,  
5 which is the computer that's up here with me, the one  
6 that I examined, it indicates that this iPhone was  
7 backed up or synced to a computer named Lisa Biron dash  
8 HP and that the particular user that effected that  
9 backup used the user account named Lisa Biron.

10 Q. And does it have an actual number associated  
11 with it?

12 A. It has the actual phone number to that iPhone  
13 right there. And it describes the iPhone as an Apple  
14 iPhone 4S.

15 Q. And is that consistent with the iPhone that  
16 was in your possession for examination?

17 A. Yes, it is.

18 Q. I'm going to show you what's been marked as  
19 Government's Exhibit 14C. Can you just tell the jury if  
20 you recognize that document?

21 A. I do.

22 Q. How do you recognize that document?

23 A. This is a printing of information that AD Labs  
24 showed for a file named Info.plist.

25 Q. And what does that tell you?



1           A.    This particular file was contained within a  
2    backup folder for an iPhone and it identifies the device  
3    that was backed up. In this instance it describes the  
4    device as being -- the device name being Lisa Biron's  
5    iPhone, the display name as being Lisa Biron's iPhone,  
6    the phone number, the iPhone 4, it shows the serial  
7    number to that iPhone.

8           Q.    And which tool did you use to extract this  
9    information?

10          A.    AD Lab.

11          Q.    I'm going to leave these two aside right now.

12                I'd like to ask you, Mr. Scripture, were you  
13    asked to look for any particular files when you were  
14    asked to examine these computer devices that you have?

15          A.    The original request was to identify video,  
16    still images, and deleted e-mails from the devices.

17          Q.    And were you asked to look for a certain type  
18    of still images or videos?

19          A.    Not originally. As the exam proceeded I was  
20    asked to try to identify certain videos in particular as  
21    well as some graphics files which are still shots.

22          Q.    Okay. Now, I'm going to show you what has  
23    been marked Government's 1A. Do you recognize that  
24    photo?

25          A.    I do.

1 Q. How do you recognize that photo?

2 A. It is one of a number of photos that were  
3 found on the hard drive that I examined, and in  
4 particular I believe it was found in the folder under  
5 users Lisa Biron, pictures Kevin.

6 Q. When you say the computer, would that be the  
7 hard drive that you examined, Government's 9B?

8 A. Yes.

9 Q. And I'm going to ask you to look at  
10 Government's Exhibit 1B. Do you recognize that photo?

11 A. Yes.

12 Q. And what do you know about that photo?

13 A. It was found in the same location as the  
14 previous photo that I just looked at.

15 Q. Again, is Lisa Biron -- user Lisa Biron,  
16 photos Kevin; is that what it says?

17 A. Users Lisa Biron, pictures Kevin.

18 Q. I'm going to show you what's been marked as  
19 Government's 1C.

20 A. And that's another photo found in the same  
21 location.

22 Q. Government's Exhibit 1H?

23 A. That's another still image that was found in  
24 the same location, users Lisa Biron, pictures Kevin.

25 Q. And Government's 1I?

1 A. That photo is in the same location as well.

2 Q. Okay. Thank you.

3 MS. FITZGIBBON: Your Honor, I neglected to  
4 ask to strike the ID on the last identification screen  
5 shot that he identified. I move to strike that ID now.

6 MR. MOIR: No objection.

7 THE COURT: Without objection.

8 MS. FITZGIBBON: Thank you.

9 (Government's Exhibit 14C admitted.)

10 Q. BY MS. FITZGIBBON: Now, in addition to the  
11 photographs that you just identified, did you also find  
12 video evidence on the defendant's computer?

13 A. I did.

14 Q. And by agreement we're going to show you still  
15 shots and ask you if you can recognize the still shot  
16 that we put in front of you. So I'm going to ask you to  
17 look at what is Government's Exhibit 2.

18 A. (Witness examining exhibit.)

19 Q. Did you recognize that yet?

20 A. Yes.

21 Q. And what can you tell me about that video?

22 A. It's one of several videos that were found in  
23 the folder users Lisa Biron, videos Kevin.

24 Q. And I'm going to ask you to look at  
25 Government's Exhibit 3.

1 (Witness looking at exhibit.)

2 A. I recognize that as the beginning of a video  
3 that was found in that same folder.

4 Q. Government's Exhibit 4.

5 (Witness looking at exhibit.)

6 A. I recognize that video as well.

7 Q. And where was that located?

8 A. In the same folder. Users Lisa Biron, videos  
9 Kevin.

10 Q. And Government's 5.

11 (Witness looking at exhibit.)

12 Q. Do you recognize that?

13 A. Yes, I recognize that as being from the same  
14 folder.

15 Q. And Government's Exhibit 6.

16 (Witness looking at exhibit.)

17 A. I recognize that video as being in a different  
18 folder. It was in users Lisa Biron, videos SEPT 7 --  
19 numeral seven, numeral one, numeral two, 712.

20 Q. And that was also on the hard drive 9B?

21 A. Yes.

22 Q. And Government's Exhibit 7 -- no, 6 --  
23 Government's Exhibit 12.

24 (Witness looking at exhibit.)

25 Q. Do you recognize that screen shot?

1 A. I do.

2 Q. And how do you recognize that?

3 A. It's a video that was contained in a backup  
4 folder for the iPhone that was described in the  
5 info.plist file, Government Exhibit 14C.

6 THE COURT: Just to be clear. You're saying  
7 the backup folder for the iPhone that was on the  
8 computer?

9 THE WITNESS: Correct.

10 Q. So this is stored in a different fashion than  
11 the other videos that you testified to?

12 A. Yes.

13 Q. If I could ask you to look again at 14B. Does  
14 this extraction report deal with that video that you  
15 just identified?

16 A. Could you rephrase the question? I'm not sure  
17 --

18 Q. Sure. This extraction report is for the  
19 iPhone. Is that consistent with the iPhone backup that  
20 you just testified to?

21 A. Yes.

22 Q. And now I'm going to show you what's been  
23 marked for identification 14D. Do you recognize that  
24 screen shot?

25 A. I do. That was obtained --

1 Q. Just tell me, how do you recognize it?

2 A. During the examination of the iPhone I used a  
3 program called Blacklight, and I used it against the  
4 backup folder, or a copy of the backup folder that was  
5 contained on the hard drive that I examined, and this is  
6 the first portion of the extraction report that was  
7 contained on the Blacklight extraction report.

8 MS. FITZGIBBON: I'd ask to strike the ID on  
9 Government's 14D.

10 MR. MOIR: No objection.

11 THE COURT: Without objection.

12 (Government's Exhibit 14D admitted.)

13 Q. BY MS. FITZGIBBON: What information on this  
14 screen shot is related to the film, Government's Exhibit  
15 12, that you just identified?

16 A. Well, it describes the iPhone as an iPhone 4S.  
17 And it was used in the iOS operating system, version  
18 6.0.1. It describes the serial number of the iPhone.  
19 It describes the actual telephone number that pertains  
20 to that phone. It describes the name of that iPhone, in  
21 addition to the backup folder or the sub-folder that the  
22 backup was contained in.

23 Q. And can you point out that sub-folder; please?

24 A. It's the sub-folder here and it's also listed  
25 down here. It's BB8F and it ends with 1B14.

1 Q. And does that contain the video that you  
2 identified as Government's Exhibit 12?

3 A. It did.

4 Q. The last document is Government's Exhibit 14E.  
5 Do you recognize that?

6 A. I do.

7 Q. How do you recognize it?

8 A. During the examination of the backup folder  
9 using Blacklight I was able to extract information  
10 pertaining to the last video that we just had displayed  
11 on the screen with the two females.

12 MS. FITZGIBBON: I move to strike the ID on  
13 14E, your Honor, and publish to the jury.

14 MR. MOIR: No objection.

15 THE COURT: Without objection.

16 (Government's Exhibit 14E admitted.)

17 Q. BY MS. FITZGIBBOH: And can you describe how  
18 you created this using Blacklight?

19 A. It's a -- this is an extract from a report  
20 using Blacklight, and it might even be a screen shot  
21 that I took of that report, and it lists the backup  
22 folder, it lists the file name of that video.

23 Q. When you say that video, you're referring to  
24 video Exhibit No. 12?

25 A. Correct. It shows that the video was taken

1 using the iPhone 4S, Apple iPhone 4S. It was recorded  
2 on May 19, 2012 at 0350, universal coordinated time,  
3 which would be Greenwich Meridian time, so for  
4 Massachusetts it would actually be May 18, 2012 at  
5 approximately 11:50 p.m. at night. And it also shows  
6 the latitude and longitude location as to the position  
7 of the iPhone or the location of the iPhone at the time  
8 the picture was taken.

9 Q. And what is your understanding about the  
10 iPhone settings with respect to time and date?

11 A. The time and date when I examined the iPhone  
12 were correct, they were accurate.

13 Q. I'm going to ask you to look at Government's  
14 14E again. It's actually the two females video at the  
15 top. Again this is the iPhone extraction. There are  
16 latitude indications at the bottom of that page. What  
17 do those indicate to you?

18 A. Well, the latitude paired with the longitude  
19 indicate the approximate position of the Apple iPhone at  
20 the time that the video was recorded.

21 Q. And there are indications as to that latitude  
22 and longitude on that document?

23 A. Yes, there are.

24 Q. And did you perform anything else to find out  
25 where that latitude and longitude is directed?



1           A.    I did.  I plugged those numbers into Google  
2   Earth.

3           Q.    And what did you find?

4           A.    And the result came back to Pratt Court,  
5   Manchester, New Hampshire.

6           Q.    I'm going to ask you to look at Government's  
7   Exhibit 9A which should still be there, the Hewlett  
8   Packard computer.  Would you take a look at that, Mr.  
9   Scripture, and do you see any markings on the Hewlett  
10  Packard?

11          A.    With respect to?

12          Q.    Is there a marking that indicates where that  
13  device was manufactured?

14          A.    It indicates that it is a product of China.

15          Q.    Okay.  I'm going to ask you to look at 9B.  
16  And again, 9B is the hard drive; is that correct?

17          A.    It is.

18          Q.    And it was contained within the Hewlett  
19  Packard?

20          A.    Correct.

21          Q.    And does that have any markings with respect  
22  to where it was made?

23          A.    It indicates that it is a product of  
24  Philippines.

25          Q.    And I'm going to ask you to please look at

1 Government's Exhibit 8, the iPhone. And is there any  
2 indication on that device as to where it was made?

3 A. It indicates that it was assembled in China.

4 (Pause.)

5 Q. If I could just show you again Government's  
6 Exhibit 6. I think you testified that you recognized  
7 this screen shot?

8 A. Yes, I do.

9 Q. And that file was found where?

10 A. That file was found in users Lisa Biron,  
11 videos, in a sub-folder SEPT 712.

12 Q. Okay. And that was found strictly on the hard  
13 drive?

14 A. On the hard drive, correct.

15 Q. With respect to that video that was extracted  
16 there -- with respect, I'm sorry, to Government's  
17 Exhibit 12, that was found also on the hard drive in a  
18 way that indicated a backup from the iPhone, is that  
19 correct? I'm sorry. That was found on the hard drive?

20 THE COURT: We're now talking about a  
21 different exhibit than the one that was shown,  
22 Exhibit 12. Now ask --

23 Q. Exhibit 12, you testified you found in a  
24 backup format on the hard drive?

25 A. Correct.

1 MS. FITZGIBBON: Thank you.

2 THE COURT: All set?

3 MS. FITZGIBBON: Yes, your Honor.

4 THE WITNESS: That last picture that you  
5 showed me --

6 MS. FITZGIBBON: Yes.

7 THE WITNESS: Was not on the backup.

8 MS. FITZGIBBON: No, that was found in a  
9 folder on the Hewlett Packard.

10 THE WITNESS: Right.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. MOIR:

14 Q. Good morning.

15 A. Good morning, sir.

16 Q. I'm Jim Moir. I've actually very few  
17 questions for you.

18 Dealing with Exhibit 12 just to be sure,  
19 Exhibit 12 is the one that's of the two women, right,  
20 from the iPhone?

21 A. It's the film from the iPhone, Exhibit 12,  
22 yes.

23 Q. I want to make sure we're talking about the  
24 same one. All the other videos that you observed and  
25 the photographs for that matter were actually in folders

1 on the HP computer hard drive, correct, all the other  
2 ones?

3 A. They were all in folders.

4 Q. Okay. But the last one was not a labeled  
5 folder except for backup; right?

6 A. It was identified with a 40-character  
7 hexadecimal name which is consistent with an iTunes  
8 backup, but that is the name of the folder.

9 Q. Okay. I'm not the most savvy person when it  
10 comes to these things. When it says backup, what does  
11 that mean to you, or does it mean anything?

12 A. With respect to an iTunes and an iPhone  
13 device, it means that the content of the iPhone was  
14 copied to the hard drive.

15 Q. All right. And it does not appear in a  
16 folder, for example, the other one which had Lisa  
17 Biron's slash pictures slash Kevin; right?

18 A. They appear in different folders, correct.

19 Q. Right. When it says backup, though, does that  
20 mean a person actually saved a video to backup or does  
21 it automatically go to backup?

22 A. It could work either way.

23 Q. Okay. So I could take a video with my iPhone,  
24 for example, and say I'm going to save it. Do I have to  
25 do something to save it?

1           A.    You could either do a backup using iTunes or  
2    you could save it directly to a folder.

3           Q.    Okay, so let's say I wanted to save it to a  
4    folder, how would I do that?

5           A.    You would just indicate the folder and you  
6    could let iTunes either give a default or you could,  
7    default name, or you could name it yourself.

8           Q.    Okay. And if I wanted to save it on HP, for  
9    example, on the computer, I would have to actually  
10   connect to the computer and do it through Wi-Fi; right?

11           THE COURT: You better clarify because I think  
12   you're talking about different things.

13           MR. MOIR: Okay. I'm sure you're more savvy  
14   with the stuff than I am.

15           Q.    BY MR. MOIR: Is there any indication that  
16   that particular one, the Exhibit 12, somebody had  
17   attempted to delete it, or can you say?

18           A.    I did not perform an exhaustive review of  
19   every file that is currently on the iPhone, but from my  
20   limited exam I did not find that file on the iPhone,  
21   however, my analysis indicates that it was on the iPhone  
22   at a particular point in time.

23           Q.    Right, and I guess what that means is a person  
24   could have taken that particular video with the iPhone,  
25   thought you deleted it, then it end up in the backup

1 folder?

2 A. Well, it would have had to have been backed up  
3 first and then deleted.

4 Q. And if you sync your iPhone with the computer,  
5 does that back it up?

6 A. It does. And in this case it appears that  
7 the, how the iPhone iOS 6 usually works is that when you  
8 back it up, if there is a file on the iPhone from a  
9 previous backup, it will not back that up again because  
10 it saves time.

11 Q. Right. So anything that hasn't been backed up  
12 previously, it will backup?

13 A. Correct.

14 Q. So when does the backup take place, I really  
15 don't know, how does a backup take place? Is it  
16 something automatically done or is it something I have  
17 to do?

18 A. It can occur either way.

19 Q. Okay.

20 A. And I don't know what the settings were on  
21 this particular iPhone at the time.

22 Q. Okay. Some, for example, you backup  
23 automatically at a certain period over a certain date  
24 and time?

25 A. It can be set up to backup auto or at certain

1       dates or you can cause it to be done manually.

2               Q.    And the idea to do backup is in case the phone  
3       crashes or something, you don't want to lose the data;  
4       right?

5               A.    So that you can restore the data that was  
6       present at that particular date of the backup.

7               MR. MOIR:   Okay, great.   Thank you very much.

8               THE COURT:   Redirect?

9               MS. FITZGIBBON:   Just briefly, your Honor.

10                       REDIRECT EXAMINATION

11       BY MS. FITZGIBBON:

12              Q.    I believe you testified with respect to  
13       Exhibit 12, the video from the iPhone backup, your  
14       information tells you that that was created on what  
15       date?

16              A.    It's consistent with it having been created on  
17       a backup of June 10th, 2012.

18              Q.    And having been originally filmed on the  
19       iPhone on what date?

20              A.    We discussed it earlier.   It was UTC time.   I  
21       believe it was May 19th at about 3 a.m., which would  
22       correspond to daylight savings time, eastern standard  
23       time the previous day at approximately 11:50 p.m.

24              Q.    Okay, so May 19, 2012?

25              A.    Correct.

1 MS. FITZGIBBON: Thank you. Nothing further.

2 THE COURT: Anything else? Thank you, sir,  
3 you're excused.

4 Does the government have any additional  
5 witnesses?

6 MR. KAVACAS: No, your Honor, and the United  
7 States rests.

8 THE COURT: All right. We have some business  
9 to attend to outside the presence of the jury. Does the  
10 defense intend to put on a case?

11 MR. MOIR: No, your Honor. The defense rests  
12 as well.

13 THE COURT: The defense rests as well subject  
14 to the matters we will be covering outside of the  
15 presence of the jury.

16 MR. MOIR: That's correct.

17 THE COURT: So members of the jury, here we  
18 are, it's 10:15. I've got some work to do with counsel  
19 that doesn't involve you. We will try to keep that work  
20 down to a minimum. It's possible we may be able to do  
21 the closing arguments before lunch, but I've got to take  
22 the time to do what I need to do with the lawyers  
23 without you. So, there may be some waiting around in  
24 the jury deliberation room. We're going to buy your  
25 lunch today because the day you deliberate we like you



1 to stay in, so the clerk will present you with some  
2 lunch orders. And as soon as we know whether you'll  
3 hear the closings before lunch or after lunch, we'll let  
4 you know, and we will, if we -- we will move as quickly  
5 as we can, but you will definitely get the closings  
6 either immediately before lunch or immediately after  
7 lunch, all right?

8 So, you can go back to the jury deliberation  
9 room. We'll get back to you as soon as we can.

10 (Jury exited the courtroom.)

11 THE COURT: I may be confused about this  
12 backup stuff. Is the witness still here or did he  
13 leave? I just want to be sure I understand what's going  
14 on if you can find him.

15 While that's going on, it's not my place to  
16 try to dictate how anything that happens in my courtroom  
17 is covered, but when I -- when something that I think is  
18 good happens, I really want to just compliment the  
19 people from the media who have apparently agreed on your  
20 own to not disclose the fact that the victim in this  
21 case is the child of the defendant. That would have  
22 inevitably led to the identification of the child, and  
23 it was, I think it's an act of responsibility to not  
24 report that and I appreciate the fact that you haven't  
25 done that.

1                   Okay, oh, you're here, sir. Can you just --  
2                   you can sit there. Just explain this backup issue to  
3                   me. I want to be sure I understand it so that there  
4                   wasn't anything inadvertently misleading going on.

5                   SA SCRIPTURE: On the hard drive there were  
6                   three backup sessions. Each device has its own backup  
7                   session. There was two backup sessions, one each for  
8                   separate iPod touch, the third one was specifically for  
9                   the iPhone. And the iPhone that we had entered into  
10                  evidence was the specific iPhone for which that backup  
11                  folder existed.

12                 THE COURT: Let me ask you about what I  
13                 understand backing up means. When you backup a device,  
14                 you are recording, making a copy of information that is  
15                 on that device and storing it in some other device. Is  
16                 that what you think of as backup?

17                 SA SCRIPTURE: Yes.

18                 THE COURT: I thought, and I may be wrong  
19                 about this, that in order to backup an iPhone to a  
20                 laptop computer it has to be physically connected to the  
21                 laptop computer.

22                 SA SCRIPTURE: It can be connected by hard  
23                 wire. I believe it can also backup through infrared or  
24                 Blue Tooth.

25                 THE COURT: Okay, but it has to be an act of

1     trying to take the information on the iPhone and putting  
2     it on to the computer. It isn't something that, well,  
3     when it gets within a certain number of feet of your  
4     computer it senses that it's there and automatically  
5     backs up, is it?

6             SA SCRIPTURE: I believe it can be set up to  
7     automatically backup, but you would notice that --

8             THE COURT: That it was backing up?

9             SA SCRIPTURE: That it was backing up.

10            THE COURT: See, I thought that backing up  
11     ordinarily happens during a syncing operation, and  
12     that's the ordinary way that one backs up an iPad or an  
13     iPhone to a computer, isn't it?

14            SA SCRIPTURE: That would be the usual way.

15            THE COURT: But you think it can happen  
16     automatically if you use a Blue Tooth or IR connection  
17     and you set the phone to do that?

18            SA SCRIPTURE: Well, I think you would be  
19     knowledgeable that it was happening because of activity  
20     that would be showing on the front of the device.

21            THE COURT: You wouldn't be able to use it,  
22     really, while it's backing up. Can you use it --

23            SA SCRIPTURE: I don't believe so.

24            THE COURT: -- in the middle of a syncing  
25     operation, I know. So, I don't know the extent to which

1     that is consistent with your understanding or not, but I  
2     had always understood that you basically had to take the  
3     connection and make the connection to the computer. But  
4     it can be made, apparently, through Blue Tooth or IR,  
5     but it isn't the ordinary case that an iPhone will  
6     backup to your laptop by going over a wireless Internet  
7     connection and going back down to the laptop and backing  
8     up so that it could just occur either over your cellular  
9     connection or a Wi-Fi connection. It has to happen  
10    through a hard connection or perhaps through IR or Blue  
11    Tooth. Is that right?

12                 SA SCRIPTURE: It can happen through IR, I  
13    believe Blue Tooth, as well as hard wire connection.

14                 THE COURT: But not wirelessly or through the  
15    cellular network?

16                 SA SCRIPTURE: I wouldn't want to testify one  
17    way or another.

18                 THE COURT: Okay. I appreciate that. I'll  
19    get one of my people downstairs to tell me because  
20    that's not the way we do it. I know if it could be  
21    setup to have my iPhone automatically backed up  
22    wirelessly, I would do it, but I don't think you can do  
23    it.

24                 In any event, it seems to me that your  
25    questioning was suggesting that there might be some way

1     that that happens automatically wirelessly over the  
2     cellular network or Wi-Fi connection and I didn't think  
3     that it happened that way. I don't think the witness  
4     testified in any way that's wrong or inconsistent or  
5     confusing, it's just I needed to clarify that myself.

6             MR. MOIR: I don't have a 4, I've got a 3, and  
7     I always do it by plugging in when I sync it.

8             THE COURT: Yeah.

9             MR. MOIR: But I just saw backup, I was  
10    wondering what that meant.

11            THE COURT: You can backup and you sync and  
12    you can sync in a way that will backup automatically.  
13    That's the way I understand. But I've never done it  
14    wirelessly through Blue Tooth or IR, and I just don't  
15    know.

16            All right. Thank you, sir, I appreciate your  
17    help on that.

18            Okay, so, you've got a motion. I want to hear  
19    you on the motion.

20            MR. MOIR: I'll be very brief, your Honor.  
21    I'll deal with Count One first, your Honor.

22            THE COURT: All right.

23            MR. MOIR: Obviously looking at my motion to  
24    dismiss based upon the standards which are to be applied  
25    at this point, both at the close of evidence -- both

1 upon the government resting and of course the close of  
2 the evidence and looking at it obviously in a light most  
3 favorable to the government, as far as Count One goes,  
4 which is the transportation with the intent, I would  
5 request the court dismiss that charge because there  
6 really has been no evidence of, and the elements of the  
7 offense, we'll go over the instructions, but one of the  
8 elements is transport with an intent to engage in sexual  
9 activity, in this case child pornography. Again,  
10 there's no question from the evidence you saw that in  
11 Canada there was pornography created. I think it's very  
12 clear.

13 THE COURT: What are you saying to the  
14 government's argument that they elicited testimony that  
15 at least one of the purposes of the trip was to  
16 memorialize her first sexual experience, and that  
17 suggests that before even embarking on the trip, that  
18 there was an intention to prepare a memorialization of  
19 that experience which would involve the production of  
20 child pornography?

21 MR. MOIR: I was listening very carefully to  
22 the evidence as it came in, your Honor, and my  
23 understanding is that, number one, Kevin Watson  
24 indicated on cross-examination that he was unaware of  
25 any such intent. Brandon Ore testified I believe the

1 same way. Mr. Hardy, I'm not sure where we ended up --

2 THE COURT: I think, again, you do a good job  
3 in cross-examining and I do think there's room to argue  
4 that point, but I have to say construing the evidence in  
5 a light most favorable to the government I think there  
6 is sufficient evidence to support the conclusion that  
7 that was one of the purposes for which they entered, so  
8 I'll overrule your objection on that point but recognize  
9 it's a fair ground for argument.

10 MR. MOIR: Very good. Dealing with Counts Two  
11 through Seven, those are all the sexual exploitation of  
12 children counts. In this case I think the evidence was  
13 quite clear from the testimony of everyone that R.B.  
14 engaged in sexual relations voluntarily, I guess that's  
15 the word I'll use, and certainly as part of the  
16 indictment the government must prove that the defendant,  
17 Lisa Biron, did knowingly employ, use, persuade, induce  
18 entice or coerce a minor child. And I would submit  
19 there's no evidence of any of those factors there.

20 THE COURT: Well, let's separate out the issue  
21 of coercion because my current thinking is, to avoid  
22 confusion here, I would charge using the other forms of  
23 action. It's quite clear that, and I propose to  
24 instruct, that consent by the minor is not a defense to  
25 any of the charges in the indictment. It simply isn't a

1 defense to production of child pornography that the  
2 minor can consent, because the minor can't consent.

3 MR. MOIR: Nor are we going to argue that,  
4 your Honor.

5 THE COURT: And so I want to make that clear  
6 at the outset. So, then you have to say let's look at  
7 the other elements, other terminology in the statute.  
8 Employed, used, persuaded, induced or enticed. You  
9 don't think there's any evidence that would permit a  
10 jury to conclude that there was employment, use,  
11 persuasion, inducement or enticement?

12 MR. MOIR: That's correct.

13 THE COURT: The evidence is sufficient to  
14 support a conclusion that your client was the one, and  
15 you can say there's reasonable doubt about this, but the  
16 evidence is sufficient if construed in a light most  
17 favorable to the jury to support a conclusion that your  
18 client was the one who was actually operating the  
19 recording device.

20 MR. MOIR: That's correct.

21 THE COURT: And with respect to at least one  
22 of the videos there's evidence to believe that the minor  
23 was not even aware that the recording was occurring  
24 during a significant portion of the event; right?

25 MR. MOIR: Right.



1           THE COURT: I think there's evidence on that  
2 point. And so how is not employment of R.B. -- how is  
3 it not the defendant -- we also recognize a  
4 mother/daughter relationship here, we also recognize  
5 that the mother was the one buying the tickets,  
6 transporting the child, paying for the hotel room,  
7 arranging with the people involved to have sex with her,  
8 how is it not employment of her in sexually explicit  
9 conduct?

10           MR. MOIR: Well, your Honor, obviously that's  
11 ultimately what the jury will have to decide.

12           THE COURT: Yeah, but you're saying there's  
13 not sufficient evidence to permit a conclusion that any  
14 reasonable juror could find that she was -- she employed  
15 the -- R.B. to engage in sexually explicit conduct.

16           MR. MOIR: That is my position, your Honor.

17           THE COURT: Okay. What does the government  
18 want to say in response to that?

19           MR. KAVACAS: Well, your Honor, I think the  
20 video evidence speaks for itself. And I think that that  
21 video evidence shows that the minor child was at least  
22 used, certainly employed by the defendant to produce  
23 this child pornography.

24           THE COURT: Yeah, let's say that a -- let's  
25 take an extreme case. For example, suppose that two

1 minors decide to engage in sexual, explicit sexual  
2 conduct in a public place and someone films that. Is  
3 the person filming that using, employing those minors to  
4 produce child pornography?

5 MR. KACAVAS: I mean, it may be more  
6 attenuating in light of the fact that there's no  
7 connection between the two minors and the film producer,  
8 but I would argue yes, that person is using those two  
9 minors to produce child pornography.

10 THE COURT: I think the answer to that  
11 question is yes, even in that extreme case. Of course  
12 this one is obviously much different. And I don't think  
13 you can ignore the existence of the parent/child  
14 relationship and the act of involvement in the mother in  
15 encouraging people to have sex with the daughter,  
16 encouraging and making arrangements for the people to  
17 have sex and recording, being the one recording R.B.  
18 having sex. I think on balance that evidence is  
19 sufficient to permit a reasonable jury to conclude  
20 beyond a reasonable doubt that there was either  
21 employment, use, persuasion, inducement or enticement.

22 I'm going to leave out coercion. I think an  
23 argument can be made that there would be coercion here  
24 as well, but I don't want to create confusion between  
25 the issue of consent or not, and it might be harder to

1 explain. I am going to instruct the jury that her  
2 consent is not a defense to any charge.

3 MR. KAVACAS: I agree with your Honor. I  
4 think coercion could create confusion in this case.

5 MR. MOIR: Your Honor, I actually would object  
6 to that. The indictment spells out, among others, the  
7 term coercion. That was what was presented to the grand  
8 jury. And while I understand where the court is coming  
9 from, I think that is part of the statutory language,  
10 and frankly for the court to excise one part which  
11 certainly the jury could consider and I think should  
12 consider, I would object to that.

13 THE COURT: Well the problem is this, then. I  
14 mean, you know the First Circuit case law is quite clear  
15 on this and the government uses this strategy routinely  
16 in indictments in this circuit and across the country,  
17 they charge multiple ways in which the crime was  
18 committed and use the conjunctive form in the  
19 indictment, and they say he did it by doing A, B and C.  
20 We know from case law that the way that allegation  
21 should be construed is, did A, B or C. And as long as  
22 they do it one way and there's agreement on the one way,  
23 the jury can convict on any, leaving the others as  
24 surplusage. Ordinarily the government's allowed to  
25 strike surplusage from an indictment. And to the extent

1    they allege coercion and acquiesce in my judgment that  
2    it is potentially confusing to leave it in, I don't  
3    think that you have a right to have it in. It's sort of  
4    my judgment, because it's just an alternative means by  
5    which the crime may be committed. To the extent the  
6    government is electing not to proceed on that means, I  
7    don't think it's a right to include it. But you're free  
8    to -- so I overrule your -- I note your objection to my  
9    proposal not to instruct on coercion as a form of  
10   action, that's one among several that are charged in the  
11   indictment, and I overrule that objection.

12               So, I deny your motion with respect to Two  
13   through Seven. Did you have an argument with respect to  
14   Eight, the possession charge?

15               MR. MOIR: I do not, your Honor.

16               THE COURT: All right. So I deny the  
17   defendant's motion for judgment as a matter of law with  
18   respect to the counts in the indictment.

19               Now, I've got a draft copy of my instructions.  
20   I want you to read those and I want to talk about them.  
21   They're fairly brief and straightforward. The  
22   boilerplate part of the instructions I told you I was  
23   going to give are the same ones I give in every single  
24   case. So I think you can focus on the elements.

25               What I suggest we do is let's take 10 minutes,

1 15 minutes for you to read those, and why don't you meet  
2 me up at my office at quarter of 11, and we'll go over  
3 them with a court reporter any objections you have to  
4 them.

5 Now, if we finish that by 11, how long is the  
6 government's closing expected to be.

7 MS. FITZGIBBON: It's approximately  
8 20 minutes.

9 THE COURT: And how about yours?

10 MR. MOIR: Approximately a half hour, your  
11 Honor.

12 THE COURT: All right. If we can get done  
13 with the jury instructions by 11, my proposal would be  
14 to do closing arguments and then instruct immediately  
15 after lunch. Let them have lunch and then I'll give my  
16 instruction immediately after that. Is that acceptable  
17 to everybody?

18 MR. KAVACAS: Yes, your Honor.

19 MR. MOIR: It is, your Honor.

20 THE COURT: All right, so, let's take a short  
21 break now. I'll meet you up in chambers with a court  
22 reporter at 10:45.

23 (Recess taken.)

24 (The following was held chambers:)

25 THE COURT: So last night I presented you with

1 a rough draft of my instructions. I haven't had a  
2 chance to review the government's instructions and I  
3 also, because of the speed, hadn't really come up with a  
4 final version of my own instructions. I did that last  
5 night and I've given that to you now and I'm asking for  
6 your observations, suggestions, and comments before the  
7 closing arguments.

8 MR. MOIR: Can I jump in, your Honor?

9 THE COURT: Yes.

10 MR. MOIR: I've had a chance to review. I  
11 didn't really go over the pattern ones that you usually  
12 do, I have no problem with that I'm sure. As far as the  
13 ones dealing with the various substantive counts, they  
14 seem to be quite in line with what you discussed with us  
15 last night and I have no objection to them.

16 THE COURT: All right. And your objection  
17 about the leaving out coercion of course you've already  
18 raised and that's preserved.

19 Does the government have any objections with  
20 respect to the proposed instructions?

21 MR. KAVACAS: No objections, your Honor, just  
22 one observation. In the instruction regarding Count  
23 Eight, possession of child pornography, paragraph four  
24 says that the image -- I'll let you catch up.

25 THE COURT: What page?

1 MR. KAVACAS: I'm sorry, page 12.

2 THE COURT: Okay.

3 MR. KAVACAS: Paragraph four. That the image  
4 of child pornography had been mailed, shipped or  
5 transported in interstate or foreign commerce by any  
6 means including by computer. I think there's no  
7 question that we know Counts Two through Five could  
8 qualify under that, but there is another part of the  
9 statute and that is, or that was produced using  
10 materials manufactured outside the states.

11 THE COURT: Did you allege that in the count  
12 itself? Let's look at the indictment. If you did, I  
13 agree you're entitled to that instruction, as I did give  
14 it with respect to the production count. So that's  
15 count --

16 MR. KAVACAS: Eight.

17 THE COURT: Eight.

18 MR. KAVACAS: Nope, you're right. You're  
19 right.

20 THE COURT: That was the problem. You alleged  
21 it that way and I felt I had to follow through.

22 MR. KAVACAS: And you're right, you're right.  
23 I apologize.

24 THE COURT: All right, nope, no problem.  
25 Other than that, you're okay?

1 MR. KACAVAS: Fine.

2 THE COURT: All right. I simply want to note  
3 for the record one issue that I had given some thought  
4 to, is one of the counts is apparently based on the  
5 picture of the three of them in the bed, and that  
6 depends on lascivious exhibition of genitals. I did not  
7 purport to define lascivious. My reading of the First  
8 Circuit's opinion of course in the, what I think of as  
9 infamous case in which I was reversed by the First  
10 Circuit as well as a more recent -- every case in which  
11 I'm reversed is infamous -- I mean that facetiously, I  
12 have nothing but respect for the First Circuit, but the  
13 more recent case, and I don't have it in the -- I may  
14 have trouble finding it in the midst of this mass of  
15 material, but I read both of them. Do you remember the  
16 name? I've got it. So I'm talking about Amirault and  
17 Fabrizio is the more recent case. Fabrizio seems to  
18 suggest that lascivious is I know it when I see it kind  
19 of terminology and doesn't require further definition.  
20 Since I have no request by the defendant for a further  
21 definition and since Fabrizio suggests that the many  
22 definitions people are trying to give to it are  
23 problematic, I would propose to leave the issue  
24 undefined.

25 MR. KAVACAS: We agree.



1           THE COURT: And that's why I haven't further  
2 attempted to define lascivious conduct. Only one of the  
3 images really depends on lascivious conduct. The others  
4 involve intercourse broadly defined as it is in the  
5 statute, so, but it is that one image that is, depends  
6 on lascivious exhibition of the genitals of any person  
7 and engagement of the child in that production. So,  
8 that's why I've done what I've done.

9           So I appreciate your comments and I will give  
10 the instructions as I have drafted them. If by chance  
11 you should see something that's objectionable in the  
12 boilerplate, of course, and you should anyways, anyone  
13 who has objections, to preserve them for purposes of  
14 appeal should come up afterwards, and I'll give you a  
15 chance to do that, to give me a final chance to correct  
16 in the event I make any misstatements, all right?

17           With that we can go back down and do the  
18 closing arguments now.

19           MR. MOIR: Can I just take one look before I  
20 go?

21           THE COURT: Yes.

22           MR. MOIR: Do you have an instruction on the  
23 failure of the defendant to testify?

24           THE COURT: I have one embedded in, of course  
25 it's important, it needs to be done. If you look at

1 page eight, government's burden of proof. First I say,  
2 on presumption of innocence, I talk about it generally  
3 and say a defendant, although accused, begins a trial  
4 with a clean slate with no evidence against her. The  
5 law permits nothing but admissible evidence presented  
6 before you to be considered. The presumption of  
7 innocence alone is sufficient to acquit. And then I go  
8 on on burden of proof and say the law does not compel a  
9 defendant in a criminal case to take the witness stand  
10 and to testify. No presumption of guilt may be raised  
11 and no inference of any kind may be drawn from the fact  
12 that a defendant does not testify because the law does  
13 not impose upon a defendant in a criminal case the  
14 burden or duty of calling any witnesses or producing any  
15 evidence. I think that covers it.

16 MR. MOIR: I just didn't see it.

17 THE COURT: Okay? All right, anything else?

18 MR. MOIR: No.

19 THE COURT: Thank you.

20 MR. KACAVAS: Thank you.

21 THE COURT: Let's got down. We'll get started  
22 as soon as everybody can get setup.

23 BEFORE THE JURY

24 THE COURT: All right, the government may  
25 proceed with its closing argument.

1 MS. FITZGIBBON: Thank you, your Honor. Good  
2 morning. (Audio being played.) That's the defendant,  
3 Lisa Biron, in a telephone call to her mother about her  
4 daughter, a 14-year-old girl. (Audio being played.)  
5 And that's the defendant in a conversation with her  
6 father. Again, speaking about her 14-year-old child,  
7 the victim in this matter. A child that she is now  
8 blaming for the criminal acts that she, the defendant,  
9 an adult, committed.

10 And these words, along with the other evidence  
11 in this case, proves to you beyond a reasonable doubt  
12 that the defendant is guilty of the crimes of  
13 transportation with intent to engage in criminal sexual  
14 activity, the production of child pornography, sexual  
15 exploitation of a child, possession of child  
16 pornography, and among the other evidence that you saw,  
17 the graphic videos and photos, and the evidence is  
18 difficult, and we know that, it's difficult to see, it's  
19 difficult to hear, and we thank you for your careful  
20 attention to it, because it's important, it's important  
21 because it takes away any doubt of this defendant's  
22 guilt, of her responsibility for these crimes.

23 You're soon going to be asked to render a  
24 verdict in this matter. And we are asking you to find  
25 this defendant guilty on all eight counts. And ladies

1 and gentlemen, you have everything you need to do that.  
2 You've heard the testimony of the witnesses. You'll  
3 have access to all the exhibits that were introduced,  
4 the photographs, the videos, and the other items. And  
5 the evidence and testimony will lead you to the correct  
6 verdict in this case, because it's a very  
7 straightforward case.

8 It's about a woman, this woman, Lisa Biron,  
9 who planned and plotted and used and exploited her  
10 14-year-old daughter. Used her as a sexual object. And  
11 for what purpose? To produce video evidence of that  
12 exploitation. We've proven all the elements of this  
13 case beyond a reasonable doubt.

14 Now, with respect to Count One we have to show  
15 that the defendant caused the interstate transportation  
16 of a child, that the child was under 18 years of age,  
17 and that the defendant caused that transportation with  
18 the intention of producing child pornography.

19 Now, as I said, this is a very straightforward  
20 case because two of the elements you don't really even  
21 need to spend much time considering. The evidence has  
22 shown, and you heard from Kevin Watson, that the  
23 defendant and her daughter traveled interstate, from New  
24 Hampshire to Buffalo, and then into Canada. And Mike  
25 Biron, the father, told you that the defendant told him

1 that she was flying out of Boston, Massachusetts. So  
2 that's the first element.

3 The child was under 18. You've heard so many  
4 witnesses testify. It is uncontroverted that R.B. is  
5 14 years old, having just turned 14 the previous May.  
6 So there's really only one last element for you to  
7 consider, and that's Lisa Biron's intent at the time  
8 that she caused that travel. And the evidence in this  
9 case proves beyond any reasonable doubt that she  
10 transported that child for the purpose of producing  
11 child pornography.

12 And what is that evidence? Well, you heard  
13 from Kevin Watson. He said the defendant told him,  
14 we'll come up there. We'll meet. We'll have sex. And  
15 we'll make a porno. And that testimony is completely  
16 believable because what did the defendant do when she  
17 met Kevin, her daughter's friend on the Internet? Well,  
18 first the testimony was she was mad that R.B. had an  
19 Internet friend. But then you heard from Kevin, Lisa  
20 began contacting him. And what did the defendant, Lisa  
21 Biron, say? She liked what she was seeing. She liked  
22 my looks. She asked me to take my clothes off. And  
23 then she began engaging in Skype sex with Kevin, and not  
24 alone, then Skype sex where the 14-year-old victim  
25 participated.

1                   And you heard from Robert Hardy. The  
2       defendant told him that when they went to Canada it was  
3       for R.B.'s first time, sex with Kevin was going to be  
4       her first sexual experience, and she wanted to capture  
5       that on video. So she went up there to make a video of  
6       her child having sex with Kevin. And Rob Hardy was  
7       living in the house. He observed the defendant watching  
8       the video. And again, that's believable.

9                   You heard from Brandon Ore that Lisa Biron  
10      liked to go show that video to people in the house, and  
11      Rob Hardy was living in the house at the same time  
12      Brandon Ore was.

13                  And you heard from Lisa Brien, a very close  
14      friend of the defendant. And what did she tell you the  
15      defendant told her? She told you that the defendant  
16      told her R.B. wanted to have sex for the first time, and  
17      Lisa Biron wanted to film it because that's an important  
18      thing to have as a keepsake.

19                  You heard this admission from three different  
20      people. And could they be any more different? Kevin  
21      Watson, immature young man from Canada, who met the  
22      defendant sex Skyping on the Internet and then was  
23      invited to come have sex.

24                  Lisa Brien, dear friend of 12 years, belongs  
25      to the same church, met the defendant going to church.

1                   And then Rob Hardy, self-admitted gang member,  
2                   Crip, took the stand and told you he belongs to a gang  
3                   that's dedicated to violence and crime, commits crime,  
4                   goes to a party at the defendant's house and he never  
5                   leaves. Why didn't he leave? You heard him admit on  
6                   cross-examination, because living there he got free  
7                   booze, weed, and sex whenever he wanted. That's what he  
8                   had when living at the defendant's house.

9                   These three individuals, who are clearly from  
10                  such different parts of life and don't know each other,  
11                  all told you that this defendant told them the same  
12                  thing, that she went to Canada for the purposes of  
13                  making a video of the 14-year-old's sexual encounter.  
14                  That's Count One.

15                 Counts Two through Seven, child exploitation,  
16                 the production of child pornography, and for that we  
17                 have to show you that the defendant knowingly employed,  
18                 used, persuaded, induced or enticed the victim to engage  
19                 in sexually explicit conduct for the purpose of  
20                 producing a visual depiction of that conduct. And that  
21                 that depiction was either transported across state lines  
22                 in interstate or foreign commerce, or was produced using  
23                 materials that were shipped or transported in interstate  
24                 or foreign commerce.

25                 So, used, persuaded, induced her. As Attorney

1 Kacavas said to you yesterday, R.B. wasn't dragged  
2 kicking and screaming. She wasn't held captive. She  
3 participated. But she was 14 -- 14 years old. And the  
4 person who has control of her, her mother, what does she  
5 do? She gives her weed. Has her smoke marijuana.  
6 Gives her alcohol. And then encourages her, coaches  
7 her to have sex, and then stands by to film three  
8 pornographic videos of her own daughter with Kevin  
9 Watson engaged in various sexual positions. And you  
10 heard it, the defendant laughs during one of them, she  
11 laughs at her child's expense.

12 Well, it's not a joke. It's not funny. We're  
13 asking you to render a verdict that says that. Because  
14 she doesn't just film her daughter, she joins in the  
15 act. We know from the testimony she engaged in sex with  
16 Kevin Watson. Engaged in sex with the child present.  
17 And you can see her joining in because Count Five,  
18 there's an exhibit, the farewell photo, just before  
19 they're checking out of the hotel, Liza Biron, the  
20 defendant, she's in bed smiling with the minor child in  
21 bed also, and between them Kevin Watson. And the focal  
22 point of that photo, Kevin Watson's erect penis.

23 And Count Six is the Brandon Ore video. You  
24 heard from Brandon Ore. Who is Brandon? Brandon is  
25 another man invited by the defendant to her home to have



1 sex with the minor child. First with the defendant, and  
2 then bring a friend over, and then you can have sex with  
3 my minor child. At first she even dupes Brandon into  
4 believing that R.B. was 18 and that they were roommates.  
5 So there's no doubt about who's producing that video.  
6 You heard it from Brandon, and you heard it on the video  
7 from both Brandon and R.B. You heard, are you still  
8 filming? And then the defendant's voice, no. And then,  
9 well, maybe. And again, laughing. But it's not funny.

10 This is the sexual exploitation of a  
11 14-year-old girl. A girl that this woman used and  
12 employed to produce those videos. These are serious  
13 crimes. And contrary to what you heard in those phone  
14 calls, this is not her fault, and she doesn't have a  
15 bigger part in this than anyone. This is the  
16 defendant's fault and it's the defendant's criminal  
17 responsibility.

18 In Count Seven, the most disturbing evidence,  
19 the video of the defendant sexually assaulting her  
20 child. The defendant is clearly visible in that video.  
21 The child's father identified the voices of Lisa Biron  
22 and his child.

23 And those videos that you sat through, that  
24 you listened to, the evidence shows that those videos  
25 either were produced in Canada and were transported

1 here, or they were produced using material that traveled  
2 in interstate commerce.

3           You heard from Special Agent Scripture. Those  
4 are computer components that were all manufactured  
5 outside the United States of America, and they were  
6 used, those videos were found on that computer. And  
7 that iPhone was found to have created and backed up to  
8 that video which is the subject of Count Seven.

9           And the final count, Count Eight, possession,  
10 very similar elements. The United States will show you  
11 that the defendant knowingly possessed a computer, a  
12 computer that contained child pornography, that the  
13 defendant knew that it contained child pornography, and  
14 that those images traveled in interstate or foreign  
15 commerce.

16           So again, this is very straightforward. You  
17 heard the evidence. Those images were all on a computer  
18 owned by Lisa Biron. The videos -- the video, the  
19 photos of Kevin were all stored in their own folder  
20 Kevin. So really, whose keepsake was that? Lisa  
21 Biron's keepsake.

22           And all of those, the videos of Brandon and  
23 the video of her own assault, again, all contained on  
24 materials that traveled in interstate commerce.

25           And James Scripture told you the user name for

1     that phone and that computer, the user name was Lisa  
2     Biron. Well, the user of that computer used her child  
3     to produce images of child pornography. She transported  
4     that child for that purpose. She possessed those images  
5     on her computer. We've proven it. And we ask you to  
6     return a verdict of guilty on all counts. Thank you  
7     very much.

8             THE COURT: Thank you. Counsel.

9             MR. MOIR: Thank you. Your Honor, what I want  
10    to do is just have several of the indictments on --

11            THE COURT: The document camera. The clerk  
12    will enable the document camera.

13            MR. MOIR: That will be great. There we go.  
14    Good morning. I want to first return to a theme that I  
15    touched on in my opening statement. And that really  
16    comes down to I want you to focus on what this case is  
17    about as well as to understand what this case is not  
18    about.

19            What it's about is very simple. Has the  
20    government proved each and every element of each test  
21    beyond a reasonable doubt to you. That's their burden.  
22    However, what it's not about is whether Lisa Biron is a  
23    good or bad person, whether she's a good or bad mother.  
24    It's not about whether she's morally depraved. And it's  
25    also not about whether she's guilty of crimes that have

1 not been charged. It's about whether the government's  
2 proven each one of these elements. And one of the  
3 things I do want to talk about is charging decisions.  
4 Who decides what charge is going to be presented to you.  
5 And who decides in what court it's going to be.

6 Obviously it's not the judge. He doesn't  
7 decide what the charges are. And certainly it's not  
8 Lisa Biron and it's not me. It's the United States  
9 Attorney. They're the ones who decide what charges are  
10 going to be brought. And you know from the testimony  
11 that charges were brought at the state level by the  
12 Manchester Police Department. And then the FBI came in  
13 and then it got brought up here by the United States  
14 Attorney.

15 But, it's the United States Attorney who  
16 decides which federal crime has been committed, and by  
17 doing that they define what they have to prove. They  
18 define the elements of the offense, and sometimes you  
19 have to shoehorn things into that to try to make things  
20 fit.

21 So, I want to go through each of these charges  
22 and go through the elements. I know they've been done  
23 verbally to you. But what you have in front of you is a  
24 copy of Count One, and Count one defines what the  
25 government has to prove. And I know the government just

1    went through this with you, but let me do it again.  
2    Actually, it's fairly straightforward here.  Knowingly  
3    transport a minor across state or foreign boundaries  
4    with the intent that the minor engage, in this case,  
5    production of child pornography.

6               No question R.B. is a minor.  That's easy.  
7    There's no question she was transported across state  
8    lines.  And I'd submit to you that there's certainly no  
9    question that there were very explicit pornographic  
10   films made.  So where do we lie here?  The essence of  
11   this charge, what makes it a federal charge, if anything  
12   else, is that at the time she is being transported, at  
13   the time she's basically crossing the boundary, you have  
14   to be able to look and see what's going on in Lisa  
15   Biron's head.  You have to look at that and say, what  
16   was her purpose in bringing her up there?  She was  
17   brought to Canada.  We know there were certain several  
18   purposes there.  It is very clear that they went up to  
19   meet Kevin Watson.  And it seems to be also very clear  
20   they were going up there to have sex with Kevin Watson.  
21   It's also clear they went up to see Niagara Falls.  
22   There's multiple purposes here.  But what you have to  
23   look at here is at the time she was traveling, did she  
24   intend to make a pornographic video, because that's what  
25   makes that a federal charge.

1           This charge is one that's defined by Congress.  
2 Congress is the one that sets up these elements here,  
3 and therefore that's what has to be proven.

4           Judge Barbadoro, when he instructs you, is  
5 going to instruct you on a number of things. He's going  
6 to instruct you that if she was in Canada and then she  
7 decided let's create a porno, let's create a video,  
8 she's not guilty of this charge. He's going to instruct  
9 you even if she drives up there and goes there with the  
10 intent that her daughter have sex, she's not guilty of  
11 this charge. It comes down to what was her intention as  
12 she was transporting her.

13           So let's take a look at what the evidence of  
14 the intent is. I know we've gone through it once, but  
15 let's do it again.

16           Brandon Ore. Brandon Ore, as you know, lived  
17 in that house, the Biron house for quite a while. He  
18 was there for several months. As he indicated, he was  
19 pretty close to them and they talked a lot. In fact, of  
20 everybody you heard here, he's certainly the closest to  
21 these two. He saw the videos from Canada. They talked  
22 about them. He was interviewed eleven times. And you  
23 know in these interviews the government wanted to find  
24 out what he knew. They asked him specifically what was  
25 the plan, what did they tell you about the plan to go to

1 Canada. See the sites and have sex. That was it. He  
2 never heard anything about a plan to create pornographic  
3 videos. And he was the closest one.

4 Kevin Watson. You saw Kevin testify first.  
5 You know that he was interviewed for two hours by the  
6 Ontario Provincial Police. We talked about that.  
7 Talked about that for a while. And that interview was  
8 challenging and it was intimidating. He's looking at  
9 charges himself. He's in serious trouble in Canada.  
10 And of course the only way he gets out of that trouble  
11 in Canada is basically by pleasing the United States  
12 government here. They say it's the truth, but the fact  
13 of the matter is, he's got to say something. If he said  
14 something that's not helpful, he's not getting the deal.  
15 And during that interview with the OPP, he never once  
16 mentioned anything about a plan to come up and do the  
17 video. Never said that. In two hours. And he was  
18 pushed. Which is odd, because it's not like he has any  
19 reason to hide it. He's up there saying yes, I had sex  
20 with a 14-year-old. In fact, he even says, oh yes, we  
21 had cocaine and Ecstasy. I mean, we had somebody that  
22 got him to say that, but it didn't happen. So, he never  
23 ever once says here was the plan.

24 The first time he tells anybody about this  
25 plan is when he's brought down to the United States and

1 he's interviewed by the people sitting at this table  
2 here, and that's when the plan comes up. He didn't talk  
3 about that, they asked specifically about the plan. He  
4 needs to please because the government knows that's part  
5 of its burden. They have to try to prove that. And you  
6 have to ask yourself, why didn't he mention it before.

7 Rob Hardy, another interesting character, Mr.  
8 Crip. I think this is the first time I've ever met a  
9 Crip. I've heard Crips and Bloods. Here's one here.  
10 And you heard about how he sort of came forward.  
11 Apparently he receives a phone call when he's in a  
12 meeting with his buddies, other Crips, it's from the  
13 FBI, and he puts on I'm not talking, I know my rights,  
14 I've been in the system, I know, I know, and hangs up on  
15 the guy. And then he tells you that at some point later  
16 he calls them back and, well, I do want to talk to you  
17 after all. That makes no sense at all. That makes no  
18 sense at all. If you are a Crip dedicated to violence  
19 and drug dealing, you're not calling up the FBI to be a  
20 good citizen. Why else is he doing it?

21 There is something going on here. I wish I  
22 could tell you what it is. But certainly when he met  
23 with the agents from the FBI, all of a sudden he comes  
24 up with a story about this. Again, he's the guy who is  
25 in the house for, relatively speaking, a short period of



1 time. He was there. Sex, drugs and -- sex, weed and a  
2 free place to stay. That's what he's there for. He is  
3 not close to these people. You saw him. He doesn't  
4 sound like a guy you can be warm and fuzzy and close  
5 with. If it was going to happen with anybody, it would  
6 have been Brandon Ore. I ask you to reject him.

7           And then you go to Lisa Brien. Lisa, as she  
8 told you, is a good friend of Lisa Biron. They've been  
9 friends for 12 years. She's known her daughter. She  
10 thought she was a good person. They went to church  
11 together. And after Lisa Biron's arrest they talked,  
12 and she basically unloads a lot on her, on this friend  
13 who she thought was a basically clean Christian woman  
14 who turns out she's doing all this stuff and she's  
15 telling her friend about it. She talks about sex with  
16 Brandon Ore, sex with Kevin and this kind of stuff. And  
17 then she talks about memento, the video as a memento.  
18 What Lisa Brien never said is that Lisa Biron told me I  
19 went to Canada to make this video. They're talking  
20 certainly. They're talking about how the video was made  
21 and then it becomes a memento. But she never told you  
22 she told me she went there to Canada to make the video.

23           One other thing and then I'm on to the next  
24 count. If Lisa Biron's intent in taking her daughter to  
25 Canada was to make that video, a porno video, to

1 memorialize her daughter's first sexual experience, I  
2 mean, what would she have done? You're not going to  
3 make these very brief video clips. You go up with your  
4 tripod, you set the camera up, and take a video of the  
5 first sexual experience versus this stuff here. Not a  
6 full record of that experience if that's what she wanted  
7 to do. I mean, what you see here and when you look at  
8 it closely is consistent with somebody who appears to  
9 have been drinking, pulling out the camera and basically  
10 impulsively taking some shots, which really goes against  
11 the idea that she planned to make this before she left.  
12 And as Agent Gibeley told you, he looked through  
13 thousands and thousands of pictures and videos that were  
14 seized from her house. I mean, what we know from that  
15 is she takes lots of pictures.

16           Again, just finishing up with this one. The  
17 proof has to be beyond a reasonable doubt that when she  
18 drove to Canada she intended to create the videos.

19           Let me get to the next count. Excuse me. I'm  
20 not going to go through each one in such detail, but  
21 this one is Count Two. Count Two through Count Seven  
22 are essentially the same. They all charge the same  
23 thing, which is sexual exploitation of a child. What  
24 does the government have to prove here?

25           One, that Lisa Biron did knowingly employ,

1 use, persuade, induce, entice or coerce a minor child to  
2 engage in sexually explicit conduct, in this case the  
3 sexually explicit conduct is child pornography, for the  
4 purpose of producing video depictions being transported  
5 in interstate, et cetera. The last two elements, by the  
6 way, are what make this the federal crime, it is the  
7 interstate transportation, otherwise it wouldn't be a  
8 federal crime. But the first one is the one we have to  
9 look at. I mean, there's no question that the images  
10 were sexually explicit. Absolutely no question. And  
11 it's clear that the ones from Canada were transported  
12 back to the United States. That's easy. And actually  
13 all of them were made with materials that were  
14 manufactured outside the United States. That's easy.  
15 But where the government fails is this. Number one, did  
16 Lisa Biron in some way basically cause R.B. to engage in  
17 sexual conduct to produce those videos? You saw those  
18 words. You can see those words in front of you.  
19 Knowingly employ, use, persuade, induce, entice a minor  
20 child. That involves doing something to make the child  
21 do it. If R.B. is voluntarily having sex, and you heard  
22 that from everyone, and the mother films it, yeah,  
23 that's really not a nice thing to do, it is not a nice  
24 act, and it certainly can be a crime in other areas, but  
25 it's not this crime, because she hasn't done anything.

1           I mean, this federal law here was enacted  
2     initially to basically go after the usual child  
3     pornography you think about. The one who, here's some  
4     money, little girl, that is forced into make a video and  
5     for commercial distribution, something like that.  
6     That's not an element in this crime. It has to be  
7     distribution for commercial. But that's why it was  
8     created, because the idea was to protect unsuspecting  
9     and vulnerable children from being caused to engage in  
10    sex to make videos like this. Cause by force, by money,  
11    by coercion. Bottom line, some sort of inducement. I  
12    mean, it's not enough for this charge that you find that  
13    Lisa Biron took videos of this girl having sex. Instead  
14    you have to find that she did something to cause this.

15           Briefly, you heard from Brandon Ore.  
16    Voluntary. She was my girlfriend. Kevin Watson.  
17    Voluntary. No inducement. Those are the two we're  
18    talking about here. Without an inducement, without  
19    causing her to do this, it is not this crime. And you  
20    just heard the government tell you, I mean, if you look  
21    back at what they just told you in opening and closing,  
22    what do they say was an inducement here? What was it  
23    that she did to cause this to happen?

24           You heard that she was barely 14 and mom was a  
25    role model in the opening. I don't think those are

1 inducements that are legally cognizable here. Weed,  
2 alcohol. Again, you've heard no evidence whatsoever  
3 that that was used as an inducement. It's not an  
4 inducement under the law.

5           Move on from this one -- one other thing.  
6 There's a few points I want to make and then I'll  
7 basically sit down. But what are we missing here? You  
8 heard from Agent Gibeley that R.B. was interviewed three  
9 times. She was interviewed twice by forensic child  
10 interviewers, and then he interviewed her himself. You  
11 know, if she said my mom made me do this, my mom did  
12 something to induce this, she'd be here on the stand  
13 testifying. She's not here. Certainly not shy about  
14 hearing things, but she's not here.

15           I do want to talk about Count Seven in  
16 particular because Count Seven is the one of the oral  
17 sex taking place, and there's no question that that is  
18 probably the one that is the most disturbing, probably  
19 the most repugnant. But once again, the fact that it is  
20 repugnant does not mean that it is this crime. It still  
21 has to be proven the same way, with that there has to be  
22 some proof that this girl was induced to do this.  
23 Again, there's nothing there that establishes this  
24 inducement.

25           Count Eight. Not even going to put it up

1     there. Possession of child pornography knowingly.  
2     There were images of child pornography on Lisa Biron's  
3     computer. That about says it all.

4             A couple other points. These are more  
5     comments than points I want to make to you. I mean, we  
6     know from Lisa Brien, she talked a little bit about Lisa  
7     Biron. Keep the two Lisa's separate here. But what she  
8     did talk about on direct examination was she talked  
9     about how she had known her for 12 years and basically  
10    seemed like a normal regular person, even through this  
11    July 4th, 2011 barbecue. Everything seemed normal. And  
12    then she sort of disappeared from sight. Wasn't talking  
13    to her. Didn't see her. Occasionally answered texts.  
14    Something happened. Something happened in that time.  
15    She went down this hole, this deep hole, and she brought  
16    her daughter with her. I'm not offering this by way of  
17    justification or anything like that, not for an excuse,  
18    but these are human beings we're dealing with. The good  
19    and the ugly.

20            Another thing I learned in this case which I  
21    really didn't know about, there's a lot of people out  
22    there, apparently, some subculture of people who use the  
23    Internet to hookup for just sex, random sex, and in this  
24    case you met three of them. You met Lisa Biron, you met  
25    Brandon Ore, and you met Kevin Watson. Didn't know it

1 was out there. Didn't want to know.

2           Okay, we've talked about emotion. We've  
3 talked about things like that. I need to talk to you  
4 about it. Because clearly seeing these images are going  
5 to bring up feelings. We're human beings. We're built  
6 that way. Seeing images like this, seeing what a mother  
7 is doing with her daughter, and allowing her daughter to  
8 do, it's oh my God, what kind of person is this, what  
9 kind of mother is this, how can she do this? You can  
10 hate her, you can loath her, you can hate what she did,  
11 you can be morally outraged about this, that's all fine,  
12 but this is big. Judge Barbadoro in his instructions is  
13 going to tell you that you can have those feelings but  
14 place them aside when you deliberate. He's going to  
15 tell you you have one duty and one duty only in this  
16 courtroom, and that's to decide whether the government  
17 has proven every element of this case beyond a  
18 reasonable doubt. That's it. You're not here to decide  
19 whether she's a bad mother or a bad person or anything  
20 like that. You can find that. But you still have to do  
21 your job, you have to do your duty.

22           And the other thing is that you're not to  
23 decide whether she may have done other crimes because as  
24 I told you, it's not up to me to decide what charges are  
25 here, it's the government. And if you look at what

1 happened here, that last video for example, the last  
2 video, right, I mean clearly there's a sexual assault  
3 committed, you have endangered a child, you have under  
4 state law production of child pornography, you have  
5 Canadian prosecution, all of those things are out there,  
6 but they're not before you. You need to focus on these.  
7 If she's prosecuted tomorrow on the charges, that's not  
8 your concern.

9           Finally, I am asking you to do something  
10 really, which is difficult in this case, which is follow  
11 the law, the law as Judge Barbadoro gives it to you.  
12 Ask yourself these questions and these questions alone.  
13 Is there proof beyond a reasonable doubt that Lisa Biron  
14 transported R.B. to Canada so she could engage in sex  
15 for the purpose of creating pornography, for the purpose  
16 of creating pornography. Two, is there proof beyond a  
17 reasonable doubt that Lisa Biron in some way caused or  
18 made or enticed her daughter to engage in sex or create  
19 pornography.

20           At the end of the day if you reach this point  
21 and say you know, I'm not sure, you know what your  
22 answer has to be, it's not guilty. If you say I'm  
23 pretty sure, I'm almost positive, even at that point  
24 your answer has to be not guilty. It has to be proven  
25 beyond any reasonable doubt that that was what her



1 intent was and that she did something.

2 It's your obligation and your sworn duty. And  
3 I'm confident you'll follow it. Thank you very much for  
4 your time.

5 THE COURT: Thank you. Rebuttal.

6 MR. KAVACAS: Briefly, your Honor, thank you.  
7 Good morning, folks. I just want to address a couple of  
8 points the defense lawyer just talked to you about, and  
9 one of those is Lisa Biron's intent.

10 He said you have to get into Lisa Biron's head  
11 to find out what she was thinking. No you don't. All  
12 you need to do is look at the evidence, not in a vacuum,  
13 but the evidence as a whole, those videos, okay. If you  
14 want to know what Lisa Biron was thinking when she took  
15 her young daughter to Canada to meet Kevin Watson, all  
16 you have to know about is the Skype sexing that she was  
17 engaging in with Kevin Watson over the preceding two  
18 months. Remember Kevin Watson's testimony? She found  
19 out that her daughter was Skype sexing with him and she  
20 was angry. She wasn't angry for long, was she. She  
21 started asking Kevin Watson how old he was, who is he.  
22 And then she started asking him to take his clothes off,  
23 and then they started engaging in sex.

24 You know, maybe she was angry. But she wasn't  
25 angry at R.B. because it was inappropriate, she was

1     angry because R.B. was doing something she wanted to do.

2                 Now, the defense lawyer and the United States  
3     have not agreed much in this case at all. But there is  
4     one thing I do agree with them. The defendant didn't go  
5     to Canada and didn't take R.B. to Canada to memorialize  
6     her daughter's first sexual experience. Uh-um. You  
7     know why you know that? Because her daughter's first  
8     sexual experience, or a sexual experience was  
9     memorialized on May 18, one week before they went to  
10    Canada. You heard that from Jim Scripture today. Jim  
11    Scripture told you that that video, Exhibit 12, in which  
12    she is performing oral sex on her daughter, was created  
13    one week before they went to Canada. So that trip to  
14    Canada wasn't to memorialize her first sexual  
15    experience, that was just to make child pornography with  
16    Kevin Watson. That's how you know that.

17                The defendant -- the defense lawyer talks  
18    about that litany of terms, employed, used, enticed,  
19    induced, and he talked about how Congress wrote this  
20    law. Then he talked about how there's no evidence that  
21    the defendant caused R.B. to engage in this conduct.  
22    Well, Judge Barbadoro is going to instruct you on the  
23    proper application of the law to the facts in this case,  
24    okay? But what you're going to hear from him, you're  
25    not going to hear the word cause, because Congress did

1 write that law and they didn't put the word cause in  
2 that law. So, there's no argument here that the  
3 defendant had to cause. All she had to do was use or  
4 employ this minor child to create child pornography.  
5 Don't check your common sense at the door, folks. Use  
6 is use. She's a user. That's what she did here. She  
7 used her daughter.

8 Finally, the defense lawyer said something  
9 happened here. The defendant did something, took her  
10 daughter with her. Something happened here. Yup.  
11 Something did happen. The defendant sexually exploited  
12 her own daughter. She encouraged young men to have sex  
13 with her, and she video recorded it. And now she blames  
14 her daughter for that conduct. Probably more than  
15 anyone else. You heard it in the audio recording.

16 Again, I'm going to ask you with your  
17 verdicts, tell this defendant this is not her daughter's  
18 fault. Tell her she should have been the mom. Thank  
19 you.

20 THE COURT: Thank you. I think we have enough  
21 time that I can give you my instructions on the law so  
22 that you can have your lunch and then begin  
23 deliberating. Is my court reporter up to going?

24 COURT REPORTER: Yes.

25 THE COURT: So I want to -- you notice

1 everybody runs for the door when I -- I would be, too,  
2 if I could but.

3           What I have to do here is a very important  
4 function, and that is to talk to you about the law of  
5 the case. And I apologize in advance, but I'm going to  
6 have to read these instructions because it's very  
7 important that I describe the law to you correctly. As  
8 I mentioned at the beginning of the trial, you won't  
9 have to take notes on what I'm saying to you now because  
10 I'll give you a copy of these instructions to have with  
11 you in the jury deliberation room. And you'll see for  
12 your benefit I have section headings. So if you want to  
13 find out what I had to say about the burden of proof or  
14 something like that, the presumption of innocence,  
15 there's a separate section there you can turn to it. I  
16 won't read the section heads to you as I go through the  
17 instructions now, but they're there for you if you want  
18 to use them.

19           So, at this stage of the trial it's my duty to  
20 instruct you on the principles of law that you will  
21 apply in deciding this case. It's your duty to follow  
22 these instructions during the course of your  
23 deliberations. You should not single out any one  
24 instruction but instead apply these instructions as a  
25 whole to the evidence in the case.

1           You are the sole and exclusive judges of the  
2 facts. You must weigh the evidence that has been  
3 presented impartially, without bias, without prejudice,  
4 without sympathy. You must make a determination as to  
5 what the facts are, what the truth is, based upon the  
6 evidence presented in the case. You will decide the  
7 case by applying the law as I give it to you in these  
8 instructions and the facts as you find them to be from  
9 the evidence.

10           In determining what the facts are, what the  
11 truth is, you must necessarily assess the credibility of  
12 each witness and determine what weight you will give to  
13 each witness's testimony. By credibility I mean the  
14 believability or truthfulness of a witness.

15           You should carefully scrutinize all the  
16 testimony given, the circumstances under which each  
17 witness has testified, and every matter in evidence  
18 which tends to show whether a witness is worthy of  
19 belief or not worthy of belief. Consider each witness's  
20 intelligence, motive, state of mind, demeanor and manner  
21 while testifying. Consider the witness's ability to  
22 see, hear, or know the matters about which that witness  
23 has testified. Consider whether the witness had a good  
24 memory of what the witness has testified about.  
25 Consider whether the witness had any reason for telling

1 the truth or not telling the truth, whether the witness  
2 had an interest in the outcome of the case, and whether  
3 the witness had anything to gain or lose as a result of  
4 his or her testimony, whether the witness had any  
5 friendship, relationship, or animosity towards other  
6 individuals involved in the case, whether the witness's  
7 testimony was consistent or inconsistent with the  
8 witness's own testimony and the testimony of other  
9 witnesses. Consider the extent to which, if any, the  
10 testimony of each witness is either supported or  
11 contradicted by other evidence in the case.

12           After assessing the credibility of each  
13 witness, you will assign to the testimony of each  
14 witness, both under direct and cross-examination, such  
15 weight as you deem proper. You're not required to  
16 believe the testimony of any witness simply because that  
17 witness was under oath. You may believe or disbelieve  
18 all or part of the testimony of any witness. It is  
19 within your province to determine what testimony is  
20 worthy of belief and what testimony may not be worthy of  
21 belief.

22           During the course of the trial you have heard  
23 several government agents testify. You should consider  
24 the testimony of a government agent in the same manner  
25 as you consider the testimony of any other witness in

1 the case. In no event should you give the testimony of  
2 a government agent any more credibility or any less  
3 credibility simply because that witness is a government  
4 agent.

5           The testimony of a witness may be discredited  
6 or, as we sometimes say, impeached by showing that the  
7 witness previously made statements which are different  
8 than, or inconsistent with, his testimony here in court.  
9 Inconsistent or contradictory statements which are made  
10 by a witness outside of court may be considered only to  
11 discredit or impeach the credibility of the witness and  
12 not to establish the truth of these earlier out-of-court  
13 statements. You must decide what weight, if any, should  
14 be given to the testimony of a witness who has made  
15 prior inconsistent or contradictory statements. In  
16 making this determination you may consider whether the  
17 witness purposely made a false statement or whether it  
18 was an innocent mistake; whether the consistency  
19 concerns an important fact, or whether it had to do with  
20 a small detail; whether the witness had any explanation  
21 for the inconsistency, and whether that explanation  
22 appealed to your common sense.

23           If a person is shown to have knowingly  
24 testified falsely concerning an important or material  
25 matter, you obviously have a right to distrust the

1 testimony of such an individual concerning other  
2 matters. You may reject all of the testimony of that  
3 witness or give it such weight or credibility as you  
4 think it deserves.

5           It is exclusively your duty, based upon all  
6 the evidence and your own good judgment, to determine  
7 whether the prior statement was inconsistent, and if so  
8 how much, if any, weight is given to the inconsistent  
9 statement in determining whether to believe all or part  
10 of the witness's testimony.

11           The fact that the prosecution is brought in  
12 the name of the United States of America entitles the  
13 government to no greater consideration than that  
14 accorded to any other party in litigation. By the same  
15 token, the government is entitled to no less  
16 consideration. All parties, whether the government or  
17 individuals, stand as equals at the bar of justice.

18           The weight of the evidence is not necessarily  
19 determined by the number of witnesses testifying on  
20 either side. You should consider all the facts and  
21 circumstances in evidence to determine which witnesses  
22 are worthy of belief. You may find that the testimony  
23 of a small number of witnesses on a particular issue is  
24 more credible than the testimony of a greater number of  
25 witnesses on the other side of that issue.



1           In reviewing the evidence, you will consider  
2     the quality of the evidence and not the quantity. It's  
3     not the number of witnesses or the quantity of testimony  
4     that is important, but the quality of the evidence that  
5     has been produced that is important. You will consider  
6     all of the evidence no matter which side produced or  
7     elicited it, because there are no property rights in  
8     witnesses or in the evidence that is presented.

9           During the course of the trial you have heard  
10    certain statements, arguments and remarks from counsel.  
11    These are intended to help you in understanding the  
12    evidence and in applying the law to this case. However,  
13    in the event that counsel have made any statements  
14    concerning the evidence that are contrary to your  
15    recollection of the evidence, you must take your own  
16    recollection of the evidence. If counsel have made any  
17    statements concerning the law that are contrary to my  
18    instructions, you must take the law from me. You're not  
19    to be concerned with the wisdom of any rule of law.  
20    Regardless of any opinion you may have as to what the  
21    law ought to be, it would be a violation of your sworn  
22    duty to base a verdict upon any other view of the law  
23    than the law as I give it to you in my instructions.

24           From time to time during the course of the  
25    trial counsel have made objections. This is a proper

1 function to be performed by counsel on behalf of their  
2 respective clients. You should not concern yourself  
3 with the fact that objections have been made, nor with  
4 my rulings on these objections. I must rule on  
5 objections and I have not intended to indicate in any  
6 way by my rulings or by what I have said what the  
7 verdict should be in this case.

8           In this case, as in all cases, I'm completely  
9 neutral and impartial. It's up to you to determine  
10 whether the defendant is guilty or not guilty based on  
11 the facts as you find them to be and the law as I give  
12 it to you.

13           The direct evidence in this case consists of  
14 (1) the sworn testimony of witnesses both on direct and  
15 cross-examination, regardless of who may have called the  
16 witness; and (2) the exhibits which have been received  
17 into evidence; and (3) any facts to which all lawyers  
18 have agreed or stipulated.

19           Certain things are not evidence and cannot be  
20 considered by you as evidence:

21           Arguments and statements by lawyers are not  
22 evidence. What they have said in their opening  
23 statements, closing arguments and at other times is  
24 intended to help you interpret the evidence, but it is  
25 not evidence. If the facts as you remember them differ

1 from the way the lawyers have stated them, your memory  
2 controls.

3 Questions and objections by lawyers are not  
4 evidence. Attorneys have a duty to their clients to  
5 object when they believe a question is improper under  
6 the rules of evidence. You should not be influenced by  
7 objections or by my ruling on objections.

8 Testimony that has been excluded or stricken,  
9 or that you have been instructed to disregard, is not  
10 evidence and may not be considered.

11 Anything you may have seen or heard when court  
12 was not in session is not evidence. You're to decide  
13 the case solely on the evidence received at trial.

14 There are two types of evidence which you may  
15 properly use in deciding whether a defendant is guilty  
16 or not guilty.

17 Direct evidence consists of the testimony  
18 given by a witness about what that witness has seen, has  
19 heard or has observed, or what the witness knows based  
20 on personal knowledge. Direct evidence also includes  
21 any exhibits that have been marked and any stipulations  
22 which have been agreed to by the lawyers for both sides.

23 Evidence may also be used to prove a fact by  
24 inference, and this is referred to as circumstantial  
25 evidence. In other words, from examining direct

1 evidence you may be able to draw certain inferences  
2 which are reasonable and justified in light of your  
3 daily experience and common sense. Such reasonable  
4 inferences constitute circumstantial evidence.

5           The law makes no distinction between the  
6 weight to be given to either direct or circumstantial  
7 evidence. It's up to you to decide how to weigh the  
8 evidence in this case. However, the defendant cannot be  
9 found guilty of any crime based upon a hunch or a  
10 suspicion, even a strong one, or what is probably the  
11 case. She can only be found guilty if on the direct  
12 evidence and the reasonable inferences you draw from the  
13 direct evidence, you are satisfied she's guilty of the  
14 crime beyond a reasonable doubt.

15           During the course of the trial, I may have  
16 instructed you that certain evidence is being admitted  
17 for a limited purpose. It's your duty to follow these  
18 instructions during your deliberations.

19           I mentioned this earlier, but I'll repeat it.  
20 The fact that an indictment has been returned against  
21 the defendant is not evidence of the defendant's guilt.  
22 An indictment is merely a formal method of accusing an  
23 individual of a crime in order to bring that person to  
24 trial. It is you who will determine whether the  
25 defendant is guilty or not guilty of the offenses

1 charged based on a consideration of all the evidence  
2 presented and the law applicable to the case. Therefore  
3 you must not consider the indictment in this case as any  
4 evidence of the guilt of this defendant, nor should you  
5 draw any inference from the fact that an indictment has  
6 been returned against her.

7 A defendant, although accused, begins a trial  
8 with a clean slate -- with no evidence against her. The  
9 law permits nothing but the admissible evidence  
10 presented before you to be considered in support of the  
11 charge against the defendant.

12 The presumption of innocence alone is  
13 sufficient to acquit the defendant unless you are  
14 satisfied beyond a reasonable doubt that the defendant  
15 is guilty after a careful and impartial consideration of  
16 all the evidence in the case.

17 The burden is always on the government to  
18 prove guilt beyond a reasonable doubt. That burden  
19 never shifts to the defendant. The law does not impose  
20 upon a defendant in a criminal case the burden or duty  
21 of calling any witnesses or producing any evidence. The  
22 law does not compel a defendant in a criminal case to  
23 take the witness stand and to testify. No presumption  
24 of guilt may be raised and no inference of any kind may  
25 be drawn from the fact that a defendant does not

1     testify, because the law does not impose upon a  
2     defendant in a criminal case the burden or duty of  
3     calling any witnesses or producing any evidence.

4             If, after careful and impartial consideration  
5     of all the evidence in this case, you have a reasonable  
6     doubt as to whether the defendant is guilty of any  
7     charge, you must find the defendant not guilty on that  
8     charge.

9             You must never find a defendant guilty based  
10    upon mere suspicion, conjecture or guess. Rather, you  
11    must decide the case on the evidence that's before you  
12    and on the reasonable inferences that can be drawn from  
13    that evidence.

14            The superseding indictment charges that the  
15    offenses at issue were committed on or about certain  
16    dates. The proof need not establish with certainty the  
17    exact dates of an alleged offense unless the term "on or  
18    about" is used, for in such instance, it is sufficient  
19    if the evidence establishes beyond a reasonable doubt  
20    that the offense was charged -- excuse me, that the  
21    offenses charged -- excuse me, the offense charged was  
22    committed on a date reasonably near the date alleged;  
23    that is, a date reasonably close in time to the date  
24    upon which the offense is alleged to have occurred.

25            All right, so now I'll talk to you about the

1 specific charges at issue here.

2           The superseding indictment contains several  
3 counts charging Lisa Biron with transportation with  
4 intent to engage in criminal sexual activity, in  
5 violation of 18 U.S.C. Section 2423(a); sexual  
6 exploitation of a minor, in violation of 18 U.S.C  
7 Section 2251(a); and possession of child pornography, in  
8 violation of 18 U.S.C. Section 2252A(a)(5)(B).

9           I'll start with Count One.

10           The defendant is charged in Count One of the  
11 indictment with transporting an individual under the age  
12 -- under 18 years of age in interstate or foreign  
13 commerce with the intent that the individual engage in  
14 the production of child pornography.

15           The defendant can be found guilty of this  
16 crime only if the government proves the following  
17 elements beyond a reasonable doubt:

18           1. That the defendant knowingly transported  
19 R.B. in interstate commerce.

20           2. At the time of the transportation, R.B.  
21 was less than 18 years of age; and

22           3. At the time of the transportation, the  
23 defendant's intention was to have R.B. engage in the  
24 production of child pornography.

25           The government does not need to prove that the

1 defendant's sole purpose in causing R.B. to be  
2 transported in interstate commerce was to have R.B.  
3 engaged in the production of child pornography. A  
4 person may have several different purposes or motives  
5 for such transportation. The government must prove  
6 beyond a reasonable doubt, however, that at least one of  
7 the defendant's substantial motivations for causing the  
8 transportation was to have R.B. engage in the production  
9 of child pornography. In other words, the production of  
10 child pornography must not have been a merely incidental  
11 motivation for the interstate transportation of R.B.

12           In order to find the defendant guilty of the  
13 charge of causing the transportation of an individual  
14 under 18 in interstate commerce with the intent to have  
15 R.B. engage in the production of child pornography, the  
16 government must prove that the defendant caused the  
17 individual to be transported from one state to another  
18 with that intent. A person travels from one state to  
19 another by crossing the state line or boundary. If you  
20 find that the defendant caused R.B. to be transported  
21 from one state to another, you may conclude that the  
22 government has proved this element of the offense.

23           It is not necessary for the government to  
24 prove that anyone actually engaged in the production of  
25 child pornography after being transported across state



1 lines. The government must prove beyond a reasonable  
2 doubt that a person under the age of 18 years old was  
3 knowingly transported across state lines by the  
4 defendant and that the defendant intended at the time of  
5 transportation for the person under 18 to engage in the  
6 production of child pornography.

7 So now I'll talk to you about Counts Two  
8 through Seven, the sexual exploitation of minor charges.

9 The defendant is charged in Counts Two through  
10 Seven with sexual exploitation of a minor.

11 The defendant can be found guilty of these  
12 crimes only if the government proves the following  
13 elements beyond a reasonable doubt:

14 1. At the time, R.B. was under the age of 18;

15 2. The defendant knowingly employed, used,  
16 persuaded, induced, or enticed R.B. to engage in  
17 sexually explicit conduct for the purpose of producing a  
18 visual depiction of such conduct; and

19 3. Either the visual depiction was  
20 transported across state lines or in foreign commerce or  
21 the visual depiction was produced using material that  
22 had been mailed or shipped or transported across state  
23 lines or in foreign commerce.

24 Now I'll talk to you about Count Eight,  
25 possession of child pornography.

1           The defendant is charged in Count Eight with  
2 knowingly possessing child pornography that has been  
3 mailed, shipped, or transported in interstate or foreign  
4 commerce.

5           The defendant can be found guilty of this  
6 crime only if the government proves the following  
7 elements beyond a reasonable doubt:

8           1. That the defendant knowingly possessed a  
9 Hewlett Packard laptop computer;

10           2. That the Hewlett Packard laptop computer  
11 contained at least one image of child pornography;

12           3. That the defendant knew that the Hewlett  
13 Packard laptop computer contained an image of child  
14 pornography; and

15           4. That the image of child pornography had  
16 been mailed, shipped, transported -- mailed, shipped, or  
17 transported in interstate or foreign commerce by any  
18 means, including by a computer.

19           Now I'm going to give you some definitions of  
20 some of the terms that I have used here.

21           In determining whether or not the government  
22 has proved each of the material elements of the offenses  
23 charged in the superseding indictment beyond a  
24 reasonable doubt, you are to consider the following  
25 definitions:

1 CHILD PORNOGRAPHY: Child pornography means  
2 any visual depiction, including any computer-generated  
3 image or picture, whether made or produced by  
4 electronic, mechanical, or other means, of sexually  
5 explicit conduct, where such visual depiction is of a  
6 minor engaging in sexually explicit conduct.

7 Minor means any person under the age of 18.

8 Visual depiction includes data stored on a  
9 computer disk, in this case, a computer hard drive.

10 SEXUALLY EXPLICIT CONDUCT: Sexually explicit  
11 conduct includes: (1) sexual intercourse, including  
12 genital-genital intercourse or oral-genital intercourse,  
13 whether between persons of the same or opposite sex, and  
14 (2) lascivious exhibition of the genitals or pubic area  
15 of any person.

16 KNOWINGLY: The term knowingly as used in  
17 these instructions to describe the alleged state of mind  
18 of the defendant means that she was conscious and aware  
19 of her actions, that she realized what she was doing and  
20 did not act because of ignorance, mistake or accident.

21 To decide whether the government has proved  
22 beyond a reasonable doubt that the defendant acted  
23 knowingly, you should consider all the surrounding  
24 circumstances. There's often no direct evidence of a  
25 person's knowledge because it is difficult to prove

1 directly a person's state of mind. Therefore, you  
2 should consider all the evidence in the case in deciding  
3 whether the government has proved beyond a reasonable  
4 doubt that the defendant acted knowingly.

5           POSSESSION: A person has possession of  
6 something if she knows of its presence and content and  
7 has physical control of it, or has the power and  
8 intention to control it.

9           INTERSTATE OR FOREIGN COMMERCE: Interstate  
10 commerce includes commerce between one state, territory,  
11 possession, or the District of Columbia and another  
12 state, territory, possession or the District of  
13 Columbia. Foreign commerce includes commerce with a  
14 foreign country. Computer transmission of images across  
15 state lines by means of the Internet would constitute  
16 interstate commerce.

17           Consent by a person under the age of 18 is not  
18 a defense to any of the charges set forth in the  
19 superseding indictment.

20           The superseding indictment charges eight  
21 separate crimes against the defendant. Each offense  
22 charged in the indictment and the evidence pertaining to  
23 it should be considered separately. The fact that you  
24 may find the defendant guilty or not guilty on one of  
25 the charges should not control your verdict as to any

1 other offense charged against the defendant.

2           The principles of law set forth in these  
3 instructions are intended to guide you in reaching a  
4 fair and just result in this case which is important to  
5 all of the parties. You are to exercise your judgment  
6 and common sense without prejudice, without sympathy,  
7 but with honesty and understanding. You should be  
8 conscientious in your determination of a just result in  
9 this case because that is your highest duty as officers  
10 of the court. Remember also that the question before  
11 you can never be: Will the government win or lose this  
12 case? The government always wins when justice is done,  
13 regardless of whether the verdict be guilty or not  
14 guilty.

15           When you've considered and weighed all of the  
16 evidence, you must make one of the following findings:

17           If you have a reasonable doubt as to whether  
18 the government has proved one or more of the essential  
19 elements of the crime charged, it is your duty to find  
20 the defendant not guilty.

21           If you find that the government has proved all  
22 of the elements of the crime charged beyond a reasonable  
23 doubt, then you may find the defendant guilty.

24           The punishment provided by law for the  
25 offenses charged in the indictment is exclusively my

1 responsibility, and should never be considered by you in  
2 any way in arriving at an impartial verdict.

3           When you retire, you should elect one member  
4 of the jury as your foreperson. That individual will  
5 act very much like the chairman of a committee, seeing  
6 to it that the deliberations are conducted in an orderly  
7 fashion and that each juror has a full and fair  
8 opportunity to express his or her views, positions and  
9 arguments on the evidence and on the law.

10           The verdict must represent the considered  
11 judgment of each juror. In order to return a verdict,  
12 it is necessary that each juror agree thereto. Your  
13 verdict must be unanimous as to each count.

14           It is your duty as jurors to consult with one  
15 another and to deliberate with a view to reaching an  
16 agreement, if you can do so without violence to  
17 individual judgment. Each of you must decide the case  
18 for yourself, but do so only after a impartial  
19 consideration of the evidence in the case with your  
20 fellow jurors. In the course of -- in the course of  
21 your deliberations, do not hesitate to re-examine your  
22 views and to change your opinion if convinced it is  
23 erroneous. But do not surrender your honest conviction  
24 as to the weight or effect of the evidence solely  
25 because of the opinion of your fellow jurors or merely

1 for the purpose of reaching a verdict.

2 Remember at all times you are not partisans,  
3 you are judges, judges of the facts. Your sole interest  
4 is to seek the truth from the evidence in the case. If  
5 during your deliberations it becomes necessary to  
6 communicate with me, you may do so only in writing,  
7 signed by the foreperson or by one or more members of  
8 the jury. Give that note to the marshal and he will  
9 bring it to my attention. No member of the jury should  
10 ever attempt to communicate with me except by a signed  
11 writing, and I will communicate with you on anything  
12 concerning the case either in writing or orally in the  
13 courtroom. Remember, you're not to tell anyone,  
14 including me, how the jury stands, numerically or  
15 otherwise, on the matters you are deciding, until you  
16 have reached a unanimous verdict or have been  
17 discharged.

18 Nothing in these instructions is intended to  
19 suggest or convey in any way or manner what your verdict  
20 should be. The verdict is your sole and exclusive duty  
21 and responsibility.

22 When you have arrived at a verdict, notify the  
23 marshal and you will be returned to the courtroom where  
24 the foreperson will render the verdicts orally.

25 Does anyone need to see me with respect to any

1 issues concerning the instructions?

2 MR. KAVACAS: No, your Honor.

3 MR. MOIR: No, your Honor.

4 THE COURT: All right. The verdict form I  
5 have here is self-explanatory, so I won't go through  
6 that with you. I think you will understand it by  
7 reading it. And I will have a minor modification made  
8 in these instructions to make it consistent with what  
9 I've read. I will get it back down to you.

10 We now have to discharge the alternates. Can  
11 you tell me who the jurors are, who are the alternates?

12 THE CLERK: Mr. Emerson and Mr. Pattison.

13 THE COURT: Mr. Emerson and Mr. Pattison, you  
14 are alternate jurors. I apologize that you have to sit  
15 through the trial and then don't get to participate in  
16 the deliberations, but we need to bring in more jurors  
17 than we need for deliberation because it's not that  
18 uncommon that we lose somebody. Here we lost a juror  
19 before we even started the case. So, we need to have  
20 alternates and you've performed a great service by being  
21 here, so I want to thank you on behalf of everybody  
22 else.

23 I also want to tell you that I can't discharge  
24 you from your responsibilities as a juror yet. I'm  
25 going to instruct you to follow my instructions until



1 you hear from the clerk. That is, don't go out and  
2 investigate the case, don't expose yourself to any  
3 discussions of the case, don't discuss the case with  
4 anybody. If we do need to bring you back before the  
5 jury reaches a verdict, we need to make sure that you  
6 follow the instructions. Once the jury has returned a  
7 verdict in the case, the clerk will contact you and tell  
8 you that you've been relieved of your obligations as a  
9 juror.

10 Now, we've ordered lunch for you. When we  
11 retire you can go back into the jury deliberation room,  
12 pick up lunch and take it with you. Say goodbye to the  
13 jurors but don't discuss the case with them. And the  
14 jurors should not begin deliberations until after the  
15 alternate jurors have left the room.

16 As far as timing, I'll leave it up to you. If  
17 you want to enjoy your lunch in peace before you start  
18 deliberations, you can do that. But from here on out  
19 it's really in your control how you handle things. So  
20 once you go back in the jury deliberation room and the  
21 alternates have left, you can decide the order in which  
22 you want to proceed.

23 The last thing is we need to swear the court  
24 security officer.

25 THE CLERK: Would you raise your right hand.

1 (Court security officer duly sworn.)

2 THE COURT: All right, thank you. With that,  
3 members of the jury, we are in recess and we will await  
4 your verdict.

5 (Jury exited the courtroom for deliberations.)

6 THE COURT: Can I ask just briefly. Have the  
7 parties had any discussions about how to handle the  
8 pornographic exhibits, the child pornography?

9 MS. FITZGIBBON: They're each saved on disks,  
10 your Honor, they can go back and there's a laptop to go  
11 back.

12 THE COURT: There is, okay. And then after  
13 deliberations just be sure you take custody of all of  
14 the exhibits, count them up, make sure we've got  
15 everything that went in comes out, okay, because we have  
16 to be responsible for --

17 THE CLERK: Absolutely.

18 MR. MOIR: Before you go, am I going to have  
19 time to get some lunch?

20 THE COURT: Yeah, we won't need you until 1:15  
21 at least.

22 MR. MOIR: Very good. Thank you.

23 THE COURT: Thank you.

24 (Luncheon recess taken while.  
25 jury deliberates.)

1                   THE COURT: Mr. Foreperson, has the jury  
2 reached a verdict?

3                   FOREPERSON: Yes, we have.

4                   THE COURT: All right, if you can hand the  
5 verdict up to the court security officer, please.

6                   (Pause.)

7                   THE CLERK: In the matter of United States of  
8 America versus Lisa Biron, we the jury find the  
9 defendant, Lisa Biron, guilty as to Count One of the  
10 superseding indictment. Guilty as to Count Two of the  
11 superseding indictment. Guilty as to Count Three of the  
12 superseding indictment. Guilty as to Count Four of the  
13 superseding indictment. Guilty as to Count Five of the  
14 superseding indictment. Guilty as to Count Six of the  
15 superseding indictment. Guilty as to Count Seven of the  
16 superseding indictment. Guilty as to Count Eight of the  
17 superseding indictment.

18                  THE COURT: Does anybody wish to have the jury  
19 polled?

20                  MR. MOIR: I do, your Honor.

21                  THE COURT: All right. Members of the jury,  
22 I'm going to go through each of you and ask you if --  
23 and I propose to poll them collectively as to all  
24 counts, any objection to that?

25                  MR. MOIR: No objection.

1           THE COURT: So I'm going to ask each of you if  
2 your verdict was guilty as to all eight counts. And  
3 I'll go one at a time and I'll point at you and say 1,  
4 2, 3, 4, et cetera.

5           Juror No. 1, was your verdict guilty on all  
6 eight counts?

7           JUROR NO. 1: Yes, it was.

8           THE COURT: Juror No. 2, is your verdict  
9 guilty on all eight counts?

10          JUROR NO. 2: Yes, your Honor.

11          THE COURT: Juror No. 3, was your verdict  
12 guilty on all eight counts?

13          JUROR NO. 3: Yes, it was.

14          THE COURT: Juror No. 4, was your verdict  
15 guilty on all eight counts?

16          JUROR NO. 4: Yes, your Honor.

17          THE COURT: Juror No. 5, was your verdict  
18 guilty on all eight counts?

19          JUROR NO. 5: Yes, your Honor.

20          THE COURT: Juror No. 6, was your verdict  
21 guilty on all eight counts?

22          JUROR NO. 6: Yes, your Honor.

23          THE COURT: Juror No. 7, was your verdict  
24 guilty on all eight counts?

25          JUROR NO. 7: Yes, your Honor.

1           THE COURT: Juror No. 8, was your verdict  
2 guilty on all eight counts?

3           JUROR NO. 8: Yes, your Honor.

4           THE COURT: Juror No. 9, was your verdict  
5 guilty on all eight counts?

6           JUROR NO. 9: Yes.

7           THE COURT: Juror No. 10, was your verdict  
8 guilty on all eight counts?

9           JUROR NO. 10: Yes, your Honor.

10          THE COURT: Juror No. 11, was your verdict  
11 guilty on all eight counts?

12          JUROR NO. 11: Yes, your Honor.

13          THE COURT: And Juror No. 12, was your verdict  
14 guilty on all eight counts?

15          JUROR NO. 12: Yes, your Honor.

16          THE COURT: All right, thank you. I want on  
17 behalf of everyone to thank you for your service here.  
18 This trial was short but it was a very difficult trial  
19 to have to serve on and I really appreciate the  
20 sacrifice you made by serving. All of us thank you for  
21 your service. You're released from your oath as jurors  
22 and you're excused. If you would, if you could wait in  
23 the jury deliberation room briefly I'd like to come back  
24 and thank you individually. You're excused now. I need  
25 to briefly talk to counsel.

1 (Jury exited the courtroom.)

2 THE COURT: Sentencing in this case will take  
3 place April 22nd at 10:30. The defendant is currently  
4 in custody. I see no reason to change her custody  
5 status.

6 I deem the defendant to have re-raised any  
7 motions for judgment as a matter of law and I deny those  
8 motions.

9 Is there anything else that we need to deal  
10 with today?

11 MR. KAVACAS: I don't think so, your Honor.

12 MR. MOIR: No, your Honor.

13 THE COURT: All right, thank you. I commend  
14 counsel for the fine job that both sides did in this  
15 case. This is a difficult case to handle. I thought it  
16 was presented very effectively and efficiently, and I  
17 appreciate both of you -- both sides behaving as  
18 professionally as they did, so thank you.

19 MR. KAVACAS: Thank you, your Honor.

20 (Jury trial adjourned at 1:35 p.m.)

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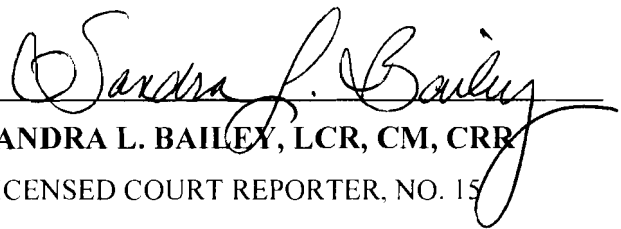
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C E R T I F I C A T E

I, Sandra L. Bailey, do hereby certify that  
the foregoing transcript is a true and accurate  
transcription of the within proceedings, to the best of  
my knowledge, skill, ability and belief.

Submitted: 9/12/13

  
SANDRA L. BAILEY, LCR, CM, CRR  
LICENSED COURT REPORTER, NO. 15  
STATE OF NEW HAMPSHIRE